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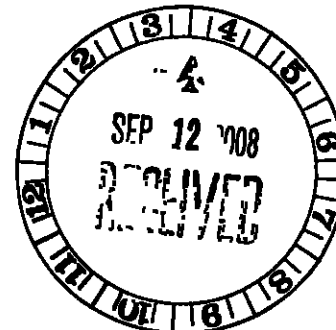
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September 12, 2008

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**Via hand delivery**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423-0001

**RE: STB Finance Docket No. 35160, Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.**

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned docket please find an original and 16 copies of the Reply of the Oregon International Port of Coos Bay ("Port") regarding the Port's Feeder Line Application. An additional paper copy is included for date-stamping.

The Port's Reply evidence consists of four volumes. Volume I contains the main text, reply verified statements and accompanying attachments. Volume I is provided to the Board in a Public, Confidential and Highly Confidential Version. Volume II consists of additional exhibits (exhibit 23 contains oversized spreadsheets) and it has a Public and Confidential Version only. Volume III and IV consist of additional evidence and is all Public.

Material in the Public version of the Reply that is designated Highly Confidential in the text is redacted and shown with blank space between double brackets [[ ]]. Confidential information in the text is redacted and shown with blank space enclosed in single brackets [ ].

We are also including 6 compact disks – 3 of the Highly Confidential Version and 3 of the Public Version. Additional compact disks are included; these consist of photographs which are workpapers to the Reply Verified Statement of Gene A. Davis.

Due to the quantity of materials being filed today, all parties on the service list will be receiving CD versions of Volumes II, III, and IV. The one exception is that counsel for the

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**The Honorable Anne K. Quinlan**  
**September 12, 2008**  
**Page 2**

Central Oregon & Pacific Railroad will be receiving a paper version. We will gladly send a paper version of Volumes II, III, and IV to any party upon request. Additionally, if any party did not receive a Confidential Version or Highly Confidential Version, yet has executed the appropriate Undertaking from the Board's Protective Order, such party should contact the undersigned in order to receive the appropriately designated volumes.

Please feel free to contact me if you have any questions.

Very truly yours,



Sandra L. Brown

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

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**REPLY OF THE OREGON INTERNATIONAL PORT OF COOS BAY**

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*Counsel for the Oregon International  
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**September 12, 2008**

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

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**REPLY OF THE OREGON INTERNATIONAL PORT OF COOS BAY**

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**I. INTRODUCTION**

The Oregon International Port of Coos Bay ("Port") respectfully submits this Reply to the comments received by the Surface Transportation Board ("STB" or "Board") regarding the Port's Feeder Line Application ("Application"), which was filed July 11, 2008, and the Port's Supplement to Feeder Line Application ("Supplement"), which was filed August 8, 2008. This Reply is filed pursuant to 49 CFR § 1151.2(f) and consistent with the Board's procedural schedule issued on August 1, 2008 in this docket. This Reply is filed 6 weeks sooner than that required in the regulations. As shown in the Application, the Supplement, and this Reply, the Board should use its authority under 49 USC § 10907 to order the sale of the Coos Bay Line (the "Line") of the Central Oregon & Pacific Railroad, Inc. ("CORP") to the Port under the feeder line railroad development program at the price and with the conditions set forth in this Reply.

**II. BACKGROUND**

In response to the Port's Application and Supplement, the Board received comments from CORP (whose filing was titled a "Response"), the State of Oregon, and the Coos-Siskiyou

Shippers Coalition, which were all filed on either August 28 or 29, 2008. The Port will use this Reply primarily to address the comments made by these three parties. In addition, dozens of parties appeared at the Board's public hearing ("Hearing") on August 21, 2007 in Eugene, Oregon, and most of those parties also commented and supported the Port's Application

The Port has already provided an extensive factual background regarding the Line, CORP's embargo and eventual abandonment application, and the decision of the Port to file its Application. This background will not be repeated here and the Port will limit repetition of the prior evidence where possible in this Reply. Instead, the Port directs the Board's attention to the Port's Reply in the Show Cause Proceeding (filed June 3, 2008), Docket 35130, the Port's Application (filed July 11, 2008) in this docket, the Port's Supplement (filed August 8, 2008) in this docket, and the Port's Comments regarding CORP's proposed abandonment and discontinuance of service (filed August 28, 2008) in Docket AB-515 (Sub-No. 2). In order to develop a complete record in this feeder line case, the Port specifically requests that the Board take administrative notice of prior evidence submitted in these related proceedings.

### **III. REQUIRED INFORMATION FOR THE PORT'S APPLICATION**

In this Section, the Port replies to the comments filed by all parties regarding the Application. In particular, the Port organizes this section according to 49 C.F.R. § 1151.3, which sets forth the supporting information required in a feeder line application. As appropriate, the Port also makes reference to the supporting Reply Verified Statements ("R.V.S.") of its witnesses, which are attached to this Reply and incorporated herein. The Port also refers back to the Verified Statements ("V.S.") from the Application and the Supplemental Verified Statements ("S.V.S.") from the Supplement.<sup>1</sup>

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<sup>1</sup> At appropriate times, the Port also refers to (1) filings made in Docket 35130, the Show Cause Proceeding regarding CORP's embargo; (2) filings made in Docket AB-515 (Sub-No. 2), the

- A. 49 C.F.R. § 1151.3(a)(1) - Identification of the line to be purchased including: (i) The name of the owning carrier; and (ii) The exact location of the line to be purchased including milepost designations, origin and termination points, stations located on the line, and cities, counties and States traversed by the line.**

No commenting party has disputed the name of the owning carrier or the exact location of the line to be purchased. In fact, CORP has used the same mileposts in its Response that the Port did in its Application. CORP Response at 1. Therefore, the Port does not need to reply to any of the comments on this point. Importantly, CORP has conceded the issue of splitting the line because CORP has agreed to sell the entire Coos Bay Subdivision in the feeder line proceeding despite the fact that CORP's abandonment and discontinuance application does not cover all of the Subdivision. CORP Response at 1 and 5 (note 3). See also Hearing transcript at 154.

In the interest of completeness, the Port reiterates that, if acquisition of the Line occurs, the Port will work with the Union Pacific Railroad ("UPRR") regarding trackage rights between (1) Cordes (MP 763.13) and Coquille (MP 786.5) at the end of the Line; and (2) Danebo (MP 652.11) and Springfield Junction (MP 644.3). These trackage rights are identical to those currently held by CORP; they would be necessary for the Port to serve the shippers of the Line and interchange with UPRR and other railroads in the Eugene area.

- B. 49 C.F.R. § 1151.3(a)(2) - Identification of applicant including: (i) The applicant's name and address; (ii) The name, address, and phone number of the representative to receive correspondence concerning this application; (iii) A description of applicant's affiliation with any railroad; and (iv) If the applicant is a corporation, the names and addresses of its officers and directors.**

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proceeding dealing with CORP's abandonment and discontinuance of service application; and (3) the filings and transcript from the Hearing on August 21, 2007.

The information previously submitted by the Port in response to the requirements of 49 CFR § 1151.3(a)(2) remains the same. As mentioned by the Port in its Application, the Port is organized under Oregon state law with commissioners appointed by the Governor and approved by the Oregon state Senate. Application at 9-11. The Port is specifically authorized to own and operate railroads. Oregon Revised Statutes §§ 777.195 and 824.040. No party commenting on the Application has disputed the Port's information, and no reply is necessary.

- C. 49 C.F.R. § 1151.3(a)(3) - Information sufficient to demonstrate that the applicant is a financially responsible person. In this regard, the applicant must demonstrate its ability: (i) To pay the higher of the net liquidation value (NLV) or going concern value (GCV) of the line; and (ii) To cover expenses associated with providing services over the line (including, but not limited to, operating costs, rents, and taxes) for at least the first 3 years after acquisition of the line.**

The Port previously asserted that the Line has no going concern value ("GCV"). Application at 23-29. In its Response, CORP agrees that the Line should be valued at its NLV. CORP Response at 6. Therefore, this Reply will not address the GCV of the Line.

No commenting party has disputed the Port's assertion that it is a financially responsible person. Application at 11-13. However, CORP has commented upon the Port's financial status, and a reply is warranted. CORP Response at 7-8. As a brief review, the Port earns regular income from business operations in the Charleston marina complex, real estate leases, and a local tax base. Application at 11. The Port also continues to have cash reserves in excess of \$7 million. Application at 12 and Exhibit 4 to Application. In addition, as described in the Port's Supplement, the Oregon Department of Transportation has re-directed \$4 million that was previously awarded to the Port for long-term rehabilitation of the Coos Bay swing bridge. Supplement at 11. This \$4 million can now be used by the Port for acquisition and rehabilitation of the Line.

The Port also continues to have a \$12.5 million loan commitment from Umpqua Bank. Application at 12. However, as the Port has learned more about the Line through its review of discovery documents, its on-site visit in mid-August, and its development of financial projections, the Port now believes that it would not be wise to incur long-term debt in the acquisition of the Line. Supplement at 11; S V S. Bishop at 10. With the rehabilitation costs and operating losses expected on the Line, the debt service required on a multi-million dollar loan would not be financially prudent and would likely not be sustainable for the Port. As mentioned in the Supplement, the Port is working with the appropriate officials in Washington in an attempt to finalize the redirection of the \$8 million in SAFETEA-LU funds for the Coos Bay swing bridge rehabilitation to be used for acquisition and rehabilitation of the Line. Supplement at 11. The Port is also working with the shippers on the Line to develop an appropriate per car subsidy to make Line operations possible. Supplement at 9-10. The Port continues to seek additional funding sources for the acquisition and rehabilitation of the Line, but obtaining additional funds may be delayed due to the schedules of Congress (focused on the election season) and the Oregon legislature (will not re-convene until January 2009).

In its Response, CORP repeatedly asserted that the Port has over \$31 million available to it. Response at 1 and 7-8. However, as the Port has stated, the \$8 million from SAFETEA-LU has not yet been re-directed by Congress. Moreover, CORP has admitted that long-term debt would be unwise for this Line. More importantly, CORP's focus on the \$31 million figure is malapropos because CORP seems to imply that the Board should set the NLV of the Line at a high level merely because the Port may have the potential to obtain significant funding. Of course, such an argument is specious.

Consideration of the Port's cash reserves and the Umpqua Bank loan commitment reveals that the Port has the ability to pay the Line's NLV, as described below. The Port provides additional support for this NLV figure in the next section of this Reply. Furthermore, the Port's financial resources will be needed to cover the expenses of operating the Line for the first three years of operation, during which time the Line is still estimated to lose approximately \$1.5 million per year. Application at 13. The Port will address the rehabilitation and escrow that needs to be established for this Line in Section IV of this Reply.

**D. 49 C.F.R. § 1151.3(a)(4) - An estimate of the NLV and the GCV of the line and evidence in support of these estimates**

**1. Analysis of Net Liquidation Value**

The Port has determined that the NLV of the Line is \$14,233,031<sup>2</sup>, consisting of \$13,323,031 for net track assets and \$910,000 for real estate. This figure represents a change from the \$9,811,100 asserted by the Port in its Application for a number of reasons.<sup>3</sup> Application at 14. The Port's original NLV estimate was developed without on-site access to the Line and without any documents or discovery from CORP. Moreover, the Port's experts adopted certain parts of the Response evidence of CORP and the Port has updated the steel prices to August 15, 2008 (the last date of inspection by Mr. Davis for this Reply evidence). While the Port has presented a track assets valuation dated August 15, 2008, the Port continues to strenuously urge the Board to consider how CORP has held onto the Line for several years

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<sup>2</sup> By providing this snapshot of the NLV, the Port is not waiving its assertion that the NLV of the Line should be based on averaged steel prices, as in prior Board cases such as Finance Docket 34335. The Port has provided additional valuations as of September 21, 2007 and September 24, 2004 to show the Board the rapid recent increase in steel prices. The Port believes that the averaging of steel prices used to calculate the final NLV should begin at least at the date of the embargo and until the date of sale.

<sup>3</sup> The Port noted in its Application that its NLV figure was likely to change once the Port obtained more information about the Line from CORP Application at 14.

without proper maintenance (including a year-long embargo with no service and no attempt to restart service) – thus delaying the ultimate abandonment of the Line and potentially reaping the benefits of increased steel prices. The Port urges the Board to order a substantial portion of the purchase price to be placed in escrow, as described in Section IV.

In its Response, CORP objected to the Port's evidence on the NLV of the Line. CORP claims that the NLV of the track assets is \$19.58 million and the NLV of the real estate is [ ]<sup>4</sup>. CORP Response at 4, 31, and 34. In total, then, CORP has asserted that the NLV of the entire Line is [ ]. CORP Response at 4. CORP's extremely high valuation for the Line warrants a comprehensive reply, which the Port provides below.

The Port's NLV calculation is supported by (1) the Reply Verified Statement of Gene A. Davis, P.E. of R.L. Banks & Associates, Inc ("R.V.S. Davis"), attached as Exhibit 1, which responds to CORP's assertions regarding the salvage value of the track assets comprising the Line; (2) the Reply Verified Statement of Jay DeVoe of J.J. DeVoe & Associates, Inc. ("R.V.S. DeVoe"), attached as Exhibit 2, which responds to CORP's contentions regarding the fair market value of real estate underlying the Line; (3) the Reply Verified Statement of James C. Coffey ("R.V.S. Coffey"), attached as Exhibit 3, which responds to the assertions of CORP's witness Patricia L. Chapman regarding the quality of CORP's real estate title and the effect of certain reservations of rights on the value of that real estate; (4) the Reply Verified Statement of the Port's Harbormaster and Deputy Executive Director Mike Gaul ("R.V.S. Gaul"), attached as Exhibit 4, which responds to certain statements of CORP regarding removal of the Umpqua and Siuslaw River bridges; and (5) the Reply Verified Statement of Dana Siegfried ("R.V.S.

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<sup>4</sup> CORP has once again made certain aggregate figures Confidential even though the Board previously ruled such aggregate numbers should be Public. Nevertheless, out of an abundance of caution, the Port is abiding by CORP's designations.



Siegfried”), attached as Exhibit 5, which responds to CORP’s claim that minimal environmental impact and requirements would apply to certain salvage activities.

**a. Discussion of Salvage Value of Track Assets**

The Port’s original estimate of the value of the salvage assets was developed by R.L. Banks & Associates, Inc. (“RLBA”). Application at 14. In particular, Gene A. Davis, P.E., an engineer with RLBA, performed the majority of the work. Exhibit 6 to Application. RLBA and Mr. Davis determined that the net value of the track assets was \$8.901 million. Application at 14. As mentioned above, this estimate was prepared without the benefit of either an on-site visit (the Port sought permission from CORP for an inspection before filing its Application, but CORP refused) or discovery documents and information from CORP. After having performed an inspection of the Line on August 13-15, 2008, reviewed the documents and information produced by CORP in this proceeding, and evaluated the analyses of CORP’s experts, RLBA now has determined that the NLV of the track assets of the Line as of several different dates to show the Board how CORP would benefit greatly due to the delay caused by the neglect of the Line and the embargo. It would be an improper windfall to allow CORP to benefit from a later valuation date which was caused entirely by CORP’s unlawful actions and embargo.

CORP has improperly criticized Mr. Davis for supposedly devising an on-site inspection plan based entirely around viewing the Line from publicly accessible areas such as street crossings, as well as a helicopter fly-over. CORP Response at 34; CORP V.S. Pettigrew at 8-9; CORP V.S. Pettigrew, Attachment 2 at 2. The implication that Davis purposefully decided to curtail his inspection of the Line prior to the filing of the Application is, of course, utterly false. The limited inspection conducted by Mr. Davis in developing his NLV calculation for the

Application only resulted from CORP's refusal to allow the Port and Mr. Davis access to the Line prior to the filing of the Application. V.S. Davis (Ex. 6) at 95-96, attached to Application.<sup>5</sup>

**i. CORP's maintenance obligation**

As the Port has made crystal clear to the Board in the last few months, CORP had extensive notice for several years of the condition of the tunnels that eventually led to the embargo Port Show Cause Reply at 11-18. The Port has also described, at length, how the common carrier obligation includes an obligation to maintain one's rail lines. Port Show Cause Reply at 6-18. Application at 48-50 and 53-54; Port Comments in Docket AB-515 (Sub-No 2) at 19-24 and 27. The obligation includes tunnel maintenance. In a study regarding railroad tunnel and bridge safety from 2007, the Government Accountability Office ("GAO") found that the federal role in overseeing railroad tunnel safety is quite limited because (1) the Federal Railroad Administration ("FRA") relies upon railroads to properly inspect and maintain their tunnels; and (2) most railroads view tunnel condition information as proprietary and do not voluntarily share it with others. Exhibit 7 at 3, 15, 22, and 23.

Despite CORP's notice of the grave tunnel situation on the Line, CORP did not engage in the necessary maintenance. Instead, CORP tried to get as much revenue as possible from the Line, effectively running the Line into the ground, by operating the Line until the last possible moment when the tunnels became inoperable. In attempting a defense to these facts, CORP has now claimed that the tunnels were already in poor shape when the Line was acquired in 1994 CORP Response at 60-62. Such an argument is irrelevant. The condition of rail infrastructure nearly 14 years in the past has no bearing on CORP's common carrier obligation over the past

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<sup>5</sup> Ironically within a day (before or after) of CORP's Response filing, CORP also filed an Opposition to the Port's Motion to Compel that claimed that CORP had provided inspection already and the Port was asking for a third inspection.

few years. CORP's claim that the condition of the tunnels in 2007 is due to their condition in 1994 is also simply wrong. In 1994, the tunnels were operational and the Coos Bay Subdivision "was an operating line of railroad." *Railroad Ventures, Inc – Abandonment Exemption – Between Youngstown, OH and Darlington, PA, in Mahoning and Columbiana Counties, OH and Beaver County, PA*, Docket AB-556 (Sub-No. 2X), slip op. at 6 (served April 28, 2008). In 2007, however, the Line was impassable. Clearly, CORP did not engage in sufficient ongoing maintenance, and cannot claim that the Line is in the same condition that it was in 1994. In fact, this argument seems to be defeated by CORP's evidence where Mr. Lundberg claims the natural deterioration of these tunnels because of their age is the cause of all CORP's problems. CORP Response at 55; V.S. Lundberg at 2.

Moreover, the Board recently rejected a nearly identical argument made by another railroad. In the *Railroad Ventures* case, the railroad claimed that it was not responsible for the condition of the rail line because it was already in a poor condition when it was acquired two years earlier. Docket AB-556 (Sub-No. 2X), slip op. at 6 (served April 28, 2008). The Board rejected this argument, finding that (1) Railroad Ventures agreed to undertake the common carrier obligation when it acquired the line; and (2) the line was operational when acquired, but was inoperable when sold. *Id.* at 6-7. In short, Railroad Ventures was "estopped from arguing" that the line "was in such poor condition when it acquired the line that it cannot be held responsible for the line's deteriorated condition." *Id.* at 7. The Board also noted, as the Port has in this case regarding CORP's actions, that Railroad Ventures should have acted sooner to remove the line from the interstate rail network. *Id.* at 7. *See also* Port Show Cause Reply at 44-45; Port Comments to Abandonment at 22-23. Therefore, the Board ordered a portion of the OFA sale funds into an escrow account to repair portions of the Line that were neglected by

Railroad Ventures during the railroad's ownership. Docket AB-556 (Sub-No. 2X), slip op. at 19 (served Oct. 19, 2000), *affirmed Railroad Ventures v. Surface Transportation Board*, 299 F.3d 523, 559-560 (6<sup>th</sup> Cir. 2002).

Lastly, [[

]] Port's

Show Cause Reply at 12-13. *Cf.* Hearing Transcript at 276-277.

CORP has also incredibly claimed that it "performed ordinary maintenance on tunnels on the Coos Bay Subdivision to the extent necessary to permit continued rail service." CORP Response at 66; V.S. Lundberg at 6. The events of the past year prove that this statement is false on its face – CORP clearly did not engage in "necessary" maintenance "permit[ting] continued rail service." Otherwise, the tunnels would not have deteriorated to the point of impassibility in September 2007.

**ii. The newly-produced Milbor-Pita documents**

On September 8, 2008, just 4 days before the Port's Reply filing was due in the feeder line case, CORP produced, for the first time, numerous documents related to tunnel inspections and proposals prepared by Milbor-Pita and other entities in 2004-2005. Exhibits 8-10. These documents should have been produced to the Port over a month ago, as they are clearly responsive to the Port's Interrogatory No. 19 and Requests for Production Nos. 1 and 10, which were served on CORP on July 11, 2008. Exhibit 11. CORP has not explained its delayed production of these documents, which has clearly hampered the Port's investigation of the feasibility of Line operations and its preparation of its Supplement and Reply in this case.

[

] Crucially, CORP undertook no repairs in response to the Milbor-Pita reports in May and September 2004, as shown by CORP's response to the Port's Interrogatory No. 42. Exhibit 18. While CORP's response to Interrogatory No 42 claims (for the first time in any of these related proceedings) that CORP repaired Tunnel 15 in October 2006 due to the Milbor-Pita Report in May 2004, the Board should reject this assertion because CORP has repeatedly explained that the Tunnel 15 repairs in late 2006 were precipitated by an FRA and Oregon DOT inspection in October 2006. CORP Show Cause Response at 7; CORP Abandonment Application at 8-9; Port Show Cause Reply Exhibit 23 at 3; Port Show Cause Reply Exhibit 35 at 4 (CORP states that it "performed immediate repairs on Tunnel 15 – [r]esult of joint observations with Federal Railroad Administration").

[

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**iii. Date of valuation**

CORP and its experts repeatedly mentioned throughout the Response that the Port's NLV calculation is somehow faulty because it is based on a valuation date of April 18, 2008. CORP Response at 38-39; V.S. Pettigrew at 12-13. Mr. Davis chose the April date for his valuation simply to be consistent; that is, April 18, 2008 was the first business day after Mr. Davis completed his limited pre-Application inspection of the Line. In any event, STB precedent shows that the Board can use an average of valuation dates, as described below.

**(A) CORP's various alternative dates**

In its Response, CORP advanced a number of different alternative dates for the Board to use in valuing the assets of the Line for determination of the NLV. CORP Response at 38-41. The Unitrac estimate, upon which CORP ultimately relies (CORP Response at 34), uses an amorphous valuation date of July and August 2008. CORP V.S. Pettigrew, Attachment 1 at 2. The L.B. Foster estimate appears to be based on prices as of August 19, 2008. CORP V.S. Pettigrew, Attachment 3 at 1 and Attachment 4 at 1. Lastly, CORP also presented other valuation estimates based on July 11, 2008, August 22, 2008, and an average of estimates from those two dates. CORP V.S. Pettigrew, Attachments 5-7.

**(B) Precedent reveals flexibility in valuation date**

Feeder line and OFA decisions from the Board and the ICC reveal that there is flexibility in determining the date of valuation for the NLV calculation. For example, in one recent case, the Board used a 14-month average price for the steel assets involved in a feeder line decision due to the “recent volatility” in the price of steel. *Keokuk Junction Railway Company – Feeder Line Acquisition – Line of Toledo Peoria and Western Railway Corporation between La Harpe and Hollis, IL*, Docket 34335, slip op at 14-15 (served Oct. 28, 2004) (“*Keokuk Junction - TPW*”). On appeal, this decision was affirmed by the 7<sup>th</sup> Circuit, which distinguished the “date of taking” language from *Kirby Forest Industries, Inc. v. United States*, 467 U S 1, 10 (1984). *Toledo, Peoria & Western Railway v Surface Transportation Board*, 462 F 3d 734, 746-748 (7<sup>th</sup> Cir. 2006), *cert denied*, 127 S.Ct. 1829 (2007). In particular, the 7<sup>th</sup> Circuit noted that “market fluctuations” and the issue of fairness sufficiently met the exceptions described by the U S Supreme Court in the *Kirby Forest* decision. *TPW v. STB*, 462 F.3d at 747-748.

Precedent from the ICC also reveals prior use of averaged steel prices in determining the NLV of a rail line. *Chicago and North Western Transportation Company – Abandonment – between Steamboat Rock and Hampton in Hardin and Franklin Counties, IA*, Docket AB-1 (Sub-No. 217), 1989 ICC Lexis 124 at \*5 (n. 5) (May 16, 1989) (ICC states that “[u]se of a 6-month average to determine NLV for track and OTM is accepted methodology”); *Chicago and North Western Transportation Company – Abandonment between Marshalltown (Powerville) and Cedar Falls Junction and between Hicks and Dike – in Marshall, Tama, Grundy, and Blackhawk Counties, IA*, Docket AB-1 (Sub-No. 211), 1988 ICC Lexis 375 at \*32 (December 7, 1988) (accepting CNW’s use of a 6-month average of recent scrap steel prices as a “reasonable estimate”).

**(C) The extensive duration of CORP's violation of the common carrier obligation justifies use of an earlier valuation date**

In the *Keokuk Junction – TPW* feeder line case, the Board also justified its use of a 14-month average for steel prices because of the long duration of the proceedings in that case. Docket 34335, slip op. at 12 (served February 7, 2005). The Board noted that use of the average was appropriate due to fluctuations in prices that occurred during the length of the proceeding, and that the average protected both sellers and buyers. *Id.* While the Port's feeder line proceeding is not yet as long as the proceeding in *Keokuk Junction – TPW*, the Board should critically evaluate all events that led up to the filing of the Port's Application. In particular, CORP knew of tunnel maintenance needs for years on the Line, yet failed to make necessary repairs, thereby violating its common carrier obligation. Port Show Cause Reply at 11-18 and 27-40; Application at 48-50 and 53-54; Port Comments in Docket AB-515 (Sub-No. 2) at 19-24 and 27. CORP received a draft of the Milbor-Pita tunnel inspection in May 2004 – this report warned CORP of serious tunnel repair needs, such as a “recipe for a major collapse” in Tunnel 15 (Port Show Cause Reply, Exhibit 8).<sup>6</sup> CORP also received a final report from Milbor-Pita on September 24, 2004. CORP took no repair efforts in response to the Milbor-Pita reports. See Section III.D.1.a.ii above.

Most importantly, during the several years it was ignoring the tunnel maintenance needs, CORP failed to appropriately designate the Line on its System Diagram Map (“SDM”) as a Category I rail line, which would have signaled to shippers, the Port, the State of Oregon, and other interested parties that CORP would not or could not make investments needed on the Line and that future service was in danger. The requirement to “maintain the accuracy” of a railroad’s

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<sup>6</sup> As shown by the Port in its Show Cause Reply (at page 14 and Exhibit 7), CORP had a copy of the May 5, 2004 Milbor-Pita report.



SDM is found at 49 USC § 10903(c)(2). The SDM is intended to include a detailed description of rail lines “potentially subject to abandonment” and rail lines for which the railroad expects to file an abandonment application within three years. 49 USC § 10903(c)(2) and 49 CFR § 1152.10(b).

System diagram regulations were originally promulgated by the ICC in November 1976 under the 4-R Act. The Senate Conference Report to the 4-R Act states the purpose of requiring a system diagram map: “In order to facilitate timely notice that service on any individual line may be in jeopardy, the bill requires each railroad to submit to the ICC a diagram of its system identifying any lines that are ‘*potentially subject to abandonment.*’” S.Conf.Rep. No. 94-595, 94th Cong., 2d Sess. 133, 142, reprinted in (1976) U.S.C.C.A.N., p. 148, 157 (emphasis added). Indeed, the ICC suggested that “there is a duty to update the system diagram map in sufficient time to avoid harming potential protestants” to an abandonment. *Illinois v. Interstate Commerce Commission*, 615 F.2d 743, 747 (7th Cir. 1979).

Today, “the importance of the Board’s collection of system diagram maps in providing advance notice to the public about rail service that is likely to be abandoned” remains essential—“especially in light of the importance of that notice to the viability of the Board’s feeder line program, 49 U.S.C. 10907, which enables shippers and communities to acquire marginal rail lines that are likely to be downgraded or abandoned.” 71 Fed. Reg. 66363 (Nov. 14, 2006).

Instead of appropriately designating the Line on its SDM, CORP failed to make needed repairs while repeatedly indicating that rail service on the Line would continue indefinitely into the future. Port Comments to Docket AB-515 (Sub-No. 2) at 17-19. Even after the embargo, CORP reassured the communities of southwestern Oregon that it “plan[ned] to reopen” the Line in a newspaper advertisement from late December 2007. Port’s Show Cause Reply, Exhibit 29.

It was only in May 2008, eight months after the embargo and four years after the Milbor-Pita 2004 tunnel report that CORP finally switched to an abandonment strategy in addressing the Line's maintenance needs. From May 2004, the date of the Milbor-Pita Report, until May 2008, the date that CORP switched to an abandonment strategy, the price of steel rose dramatically. The Board should not allow CORP to benefit from this massive increase in price during the time when CORP was knowingly ignoring its statutory obligations and the immediate maintenance needs of the Line. Equitable principles and the discretion afforded the Board to protect the integrity of the abandonment, feeder line, embargo, and SDM processes justify that the Board value the assets of the Line as of May 5, 2004 (date of the Milbor-Pita Report), March 21, 2007 (roughly the last possible moment that CORP could have filed for abandonment, thereby giving interested parties time to purchase and repair the Line before embargo would have become necessary on September 21, 2007), or September 21, 2007 (date of the embargo). *Cf.* Port Comments to Docket AB-515 (Sub-No. 2) at 25-27.

In its Response, CORP suggests that any valuation date different than the ones presented in its bid offers would be an unconstitutional taking without just compensation. CORP Response at 40. CORP's suggestion does not accurately portray the law on this issue. The 5<sup>th</sup> Amendment states that "private property [shall not] be taken for public use, without just compensation." Use of the word "just" in the Amendment "evokes ideas of equity and fairness." *United States v. Commodities Trading Corporation*, 339 U.S. 121, 124 (1950). While the fair market value of a property is often used as the determining factor in what constitutes "just compensation," fair market value "is not an absolute standard nor an exclusive method of valuation." *United States v. Virginia Electric & Power Company*, 365 U.S. 624, 633 (1961). In other words, courts have used standards other than market value if its application "would result in manifest injustice to

owner or public.” *United States v. Commodities Trading Corporation*, 339 U.S. 121, 123 (1950); *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1, 10 (1984).

In the interest of justice, the unique facts facing the Board in this case warrant a determination of the price a willing buyer would pay for the Line as of September 21, 2007. *R.V.S. Davis*, Exhibit 1. Furthermore, Board action is required in order to protect the integrity of the Board’s processes, such as the embargo, SDM, abandonment, and feeder line provisions. *Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH and Darlington, PA, in Mahoning and Columbiana Counties, OH and Beaver County, PA*, Docket AB-556 (Sub-No. 2X), slip op. at 12 (served Oct. 4, 2000) (“It is well settled that administrative agencies have inherent authority to protect the integrity of the regulatory processes that they are charged with administering, and to prevent or remedy a misuse of those processes.”) (internal citations omitted).

Finally, action is required to protect the purposes of the feeder line provisions. House Conference Report No. 96-1430 at page 124, reprinted in 1980 U.S.C.C.A.N. 4110, 4156 (the feeder line statute is designed “to provide shipper groups and government agencies an alternative to inadequate rail service and to preserve feeder lines prior to the total downgrading of such lines”); *Simmons v. Interstate Commerce Commission*, 871 F.2d 702, 706-707 (D.C. Cir. 1989) (feeder line statute gives shippers an opportunity to acquire lines prior to their total deterioration). To avoid manifest injustice, the Board should not let CORP have the twin windfall of both avoiding required maintenance costs for the past several years while also reaping increased steel prices that have doubled during the imposition of an unlawful embargo. Of course, the embargo itself was caused by the afore-mentioned lack of necessary maintenance. During the embargo, CORP asserted that service would re-start soon, thereby forestalling any

feeder line applications, before changing to an abandonment strategy 8 months later when steel prices had nearly doubled. Port Comments in AB-515 (Sub-No. 2) at 19-24

**iv. Removal of bridges over the Umpqua and Siuslaw Rivers is required**

In its Response, CORP has taken a variety of positions regarding the requirement that the swing bridges over the Umpqua and Siuslaw Rivers must be entirely removed due to U.S. Coast Guard regulations. CORP Response at 41-54 CORP has alternatively argued that the bridges do not need to be removed (CORP Response at 42-45), that only a portion of the bridges needs to be removed (CORP Response at 45-47), or that, if the entirety of each bridge must be removed, the cost should be less than that shown by the Port in its Application (CORP V.S. Pettigrew at 22; CORP V.S. Maloney at 2).

The filings by the Port and CORP support that both bridges must be removed in their entirety. A letter from the U.S. Coast Guard, Chief of the Bridge Section of the 13<sup>th</sup> District (which includes Oregon) reveals that Coast Guard policy seeks removal of all bridges which cross navigable waters but are no longer used for land transportation purposes. Attachment C to R.V.S. Gaul, Ex. 4. The Chief even specifically states that the Umpqua and Siuslaw bridges “qualify for removal.” Documents included in the CORP Response reinforce this conclusion. In particular, an e-mail from Alesia Steinberger, the Chief of Alterations and Drawbridge Operations of the Office of Bridge Administration for the U.S. Coast Guard in Washington, DC, stated that a bridge “is considered in violation of federal law and...constitute[s] an unreasonable obstruction to navigation” if the Coast Guard finds that it is over navigable waters and its no longer used for land transportation. CORP V.S. Pettigrew, Attachment 9 at page 3. Ms. Steinberger noted that a bridge owner has only three options in such a situation. (1) return the bridge to active transportation use; (2) obtain Army Corps of Engineers approval if there is a

desire to leave part of the bridge in the waterway; or (3) remove the bridge from the waterway. CORP V.S. Pettigrew, Attachment 9 at page 3.

**Option #1 – return to active transportation use**

The only evidence offered by CORP for meeting option #1 is a suggestion that there may be possible interest in using the two swing bridges for trail use if the Line is abandoned. CORP Response at 43. The speculative nature of CORP's position on this point is reason enough for the Board to reject it. Furthermore, the possibility of trail use across these two bridges creates innumerable problems; CORP has not determined the necessary costs to overcome these problems, whether any trail sponsor would be willing to assume these costs, or even addressed the problems at any level. The Board should not countenance CORP's unsupported assertion that trail use would occur.

The sole support for CORP's claim that trail use is a possibility consists of a brief letter from the Trust for Public Land ("Trust"), which states that, if there is "local support for such an undertaking, The Trust for Public Land would be very interested in entering negotiations with RailAmerica" regarding possible purchase of the abandoned Line for trail use and rail-banking. CORP V.S. Pettigrew, Attachment 10. On its face, this letter is intrinsically speculative – the Trust would only be interested if "local support" of an unspecified nature exists, and, even if such support exists, the Trust would only be interested in "entering negotiations" with RailAmerica. In short, the letter is so far from conclusive evidence of future trail use that the Board need not consider this issue any further.

Furthermore, Counsel for the Port spoke with Owen Wozniak of the Trust and was informed that it was CORP that had contacted the Trust and requested a letter from the Trust. Mr. Wozniak was apparently told that the letter had to be received in order to preserve the

possibility of the corridor as a trail. There was no discussion of any terms of a trail agreement. Furthermore, there was no discussion of the responsibility for current condition of the Line, liability, or the cost or regulations associated with the swing bridges or other bridges and tunnels on the Line. Indeed, the Trust's letter seems to be carefully worded based on a speculative conceptual idea.

Even if the Board were to accept the Trust's tepid letter of possible interest to enter negotiations as an indication that trail use would occur, the Board still must subtract the cost of bridge removal in determining the Line's NLV. *A & R Line, Inc. – Abandonment Exemption – in Cass and Pulaski Counties, IN*, Docket AB-855 (Sub-No. 1X), slip op. at 3-4 (served August 13, 2004). The determination of NLV is based on "liquidation" of the Line – hence, all costs must be included. Even CORP's outside counsel recognizes this fact. Hearing Transcript at 156-157 (CORP Counsel Terence Hynes states that the NLV valuation for feeder line purposes is a hypothetical endeavor determining what the line would be worth if it were scrapped). If the bridge removal costs are not subtracted from the NLV, then the Port would, in effect, have to pay for bridge removal twice. That is, the Port would have to pay an inflated NLV that does not truly represent the liquidation cost of the Line because the bridge removal cost is not subtracted; then, in the event the Port was faced with abandonment of the Line at some future date, such as 20 years from now, the Port would have to remove the bridges itself and, therefore, pay for bridge removal costs again.

In addition, as referenced above, CORP has not broached, and the Trust has not indicated a willingness or financial wherewithal to assume, the myriad of technical, legal, financial, and logistical problems that would be inherent in owning and operating a moveable trail swing bridge. First, transformation of the Umpqua River bridge to a trail swing bridge would likely

require U.S. Coast Guard approval and a notice-and-comment rulemaking because it entails a “permanant change” in bridge “operating requirement[s]”. 33 CFR § 117.8 Currently, the Umpqua River bridge is kept in the open position as a default and, by regulation, it can only be closed for trains, other railroad equipment, or maintenance. 33 CFR § 117.893(b). Therefore, allowing the bridge to close for trail users would be an operational change requiring a Coast Guard rulemaking. Likewise, if the trail were to extend over the Coos Bay swing bridge, Coast Guard approval and a rulemaking would also be necessary for the same reason. 33 CFR § 117.871.

Second, the trail sponsor would be required to meet numerous maintenance and operation requirements. CORP V.S. Pettigrew, Attachment 9 at 4. See also R.V.S. Gaul. The swing bridges would need a “drawtender” (i.e., an operator) to operate the moveable portion of each bridge. 33 CFR §§ 117.7(a) and 117.41. Remote or automated operation may be possible, but it would require Coast Guard approval. 33 CFR § 117.42. In any event, the trail sponsor would have to meet very detailed rules regarding sounding of fog horns during foggy weather. 33 CFR § 117.893(b). Meanwhile, complex procedures regarding fog bells and sirens apply to the operator of the Coos Bay swing bridge during foggy weather. 33 CFR § 117.871. The trail sponsor would also have full maintenance and liability obligations under 16 USC § 1247(d) and 33 CFR § 117.7. Specific requirements exist for the lights and fog signals on swing bridges, and there are penalties for failing to comply with these requirements. 33 CFR §§ 118.5, 118.70, and 118.130. The trail sponsor’s bridge operator would also have to abide by the basic signaling and opening rules set forth in 33 CFR §§ 117.9 to 117.40. The Coast Guard assesses penalties for failure to follow the bridge operations rules. 33 CFR § 117.49(b).

In short, the bridge removal costs must be included in determining the liquidation value of the Line. Moreover, CORP has not given any indication that there is any entity or person willing to assume the considerable maintenance, operational, and financial burdens associated with acting as a trail sponsor for a trail across the Line's swing bridges. Compliance with legal, permit, and rulemaking requirements would be expensive. Maintenance obligations and liability exposure would similarly be pricey. The trail sponsor would have to hire operators and develop an operational plan for how trail users would notify the operator that the swing span should be closed. These extreme hurdles dwarf CORP's "evidence," consisting solely of a vague letter of possible interest. The Board should reject CORP's suggestion that such trail use speculation should be used to negate the need to account for salvage costs of bridges over navigable waters in the valuation of a Line being considered for sale under the Feeder Statute.

**Option #2 – obtain Army Corps of Engineers approval to leave part of bridge in waterway**

CORP has made no effort to show any approval from the Army Corps of Engineers to leave part of either the Umpqua or the Siuslaw River bridges in the waterway. In one of its alternate bridge estimates, CORP did include \$150,000 for Corps of Engineers permitting (CORP V.S. Maloney at 7-8), but there is no indication of the purpose or scope of these permits. More importantly, the bridge removal estimate which includes the Corps of Engineers permitting cost is not the estimate relied upon by CORP. The Staton proposal, which CORP uses for its NLV assertions, expressly excludes any permits. CORP V S. Pettigrew, Attachment 8 at 1. The third bridge removal estimate, from L.B. Foster, is a bare assertion amounting to \$2 million and does not mention any Corps of Engineers permits. CORP V.S. Pettigrew at 19, and Attachment 3 at 2.



Moreover, as the Port has shown in the Reply Verified Statements of Mike Gaul and Dana Siegfried, the Corps of Engineers has been actively engaged in permitting work in the Oregon estuaries. Thus, CORP's claim that the Corps will allow CORP to leave both partial structures in place over wetlands and also creosote-treated timbers in waters that contain threatened species is unsupported and contrary to the evidence.

**Option #3 – completely remove the bridges from the waterway**

Given the inapplicability of options 1 and 2, CORP is only left with the requirement that the Umpqua and Siuslaw bridges be removed<sup>7</sup> – which is exactly what the Port argued in its Application. Application at 17-19. Ms. Steinberger of the Coast Guard suggested that the removal requirement would apply “bank-to-bank,” but she also noted that Army Corps of Engineers approval would be required if a portion of the bridge were to remain. (CORP V.S. Pettigrew, Attachment 9 at 4). As stated above, CORP has not provided any approval of the Army Corps of Engineers regarding allowing any portion of these two bridges to remain.

Portions of the bridges, while not over the waterway, nonetheless do cross wetlands under the jurisdiction of the Army Corps of Engineers. It is highly unlikely that the Corps of Engineers would allow an abandoned, decaying, and chemically treated timber trestle (or rusting metal structure) to remain over the fragile wetland ecosystem. Even if Army Corps of Engineers approval were not required, however, CORP has not supported its assertion that the bridges could simply be truncated and partially removed. First, the bridge removal cost estimates that CORP has provided are incomplete, flawed, and do not represent reliable evidence. See Section

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<sup>7</sup> At footnote 16 of its Response, CORP seems to imply that since these bridges were built pursuant to Department of War permits that did not include a transportation limitation and predated the creation of the U.S. Coast Guard, CORP should not have to abide by current federal regulations on obstructions to navigable waters. However, this argument, and every other variation that CORP might try to create, was overruled by the U.S. Supreme Court in *Louisville Bridge Company v. United States*, 242 U.S. 409 (1916).

III.D.a.v below. Second, part of the land-based portion of the Siuslaw River bridge crosses state Route 126, and the Oregon Department of Transportation (“ODOT”) would prohibit CORP from abandoning a truncated, unused, and un-maintained partial rail bridge over this road. Specifically, ODOT has jurisdiction over public grade crossings in the state and if a railroad crossing is closed to railroad use, such as in an abandonment, the railroad is required to remove all materials and restore the crossing within 12 months. Oregon Administrative Rule (OAR) 741-120-0050 (3). This is especially important for the Route 126 rail overpass because the road curves in that area, thereby limiting visibility. In addition, as shown in the bridge inspection reports contained in Volume III at bates stamp CORP001805 and CORP001807-001808 the bridge already has vehicular impact damage to the overpass which further supports that it must be removed in the event that rail operations are abandoned.

Third, the abandoned partial rail bridges would constitute attractive nuisances, and local county planning authorities would not allow CORP to simply walk away – abdicating all responsibility for them. Under Oregon law, the attractive nuisance doctrine transforms trespassing children into invitees, meaning that the landowner then owes a duty of reasonable care to the children. *Wheeler v City of St. Helens*, 153 OR 610, 615-616 (1936) (court notes that if a child, “without express invitation, is lured upon the land of another by the display of an attractive object that is kept there, the attractive nuisance doctrine changes his status from trespasser to invitee” and reasonable care is owed to the child).

Fourth, these hulking bridge remnants would create liability and development nightmares for future owners of the land parcels involved, and CORP’s real estate evaluation for the Line has not included any discount to the value of the affected parcels of land. In fact, CORP might have to compensate the subsequent landowner for taking ownership of these parcels of land due

to the responsibility that would be assumed for the decaying bridge remnants. Similarly, the Board should not allow CORP to dump the problem of abandoned bridges or abandoned bridge remnants on the communities in Lane and Douglas Counties. The liability, safety, and environmental concerns would be expensive to rectify in the future. Washington and Dakota Counties, in Minnesota, are grappling with just such a problem today in dealing with a dangerous and decaying former railroad swing bridge over the Mississippi River that they inherited through tax forfeiture. Exhibit 12 The counties are lamenting the fact that there is no money to rehabilitate or remove the bridge, yet the bridge remains a danger for river traffic and trespassers. Exhibit 12. It is estimated that removal of the 1,661-foot swing bridge (roughly the size of the Umpqua bridge) will cost \$5 million.

- v. **The Port's bridge removal cost estimates are the only probative evidence of record because, unlike CORP's estimates, they are from local contractors experienced in marine bridge removals and they are not rife with exclusions**

CORP provided a variety of bridge removal estimates in its Response. As mentioned earlier, CORP's main argument is that no portions of the bridges need to be removed; therefore, CORP has asserted that the NLV of the track assets of the Line is based on the Unitrac bid of \$19.58 million – which does not include bridge removal costs. CORP Response at 31. CORP has also argued that, if bridge removal is required, the NLV of the track assets should be the Unitrac bid minus the partial removal cost (\$2.07 million) developed by the Staton Companies.<sup>8</sup> CORP Response at 53. The Board should reject the Staton Companies bid as used by CORP because it is not reliable under the rule of *Pyco Industries, Inc – Feeder Line Application* –

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<sup>8</sup> The Staton estimate is actually for a total of \$3.03 million, but CORP states that it is only considering the parts of the bid for removal of only the bridge portions over the waterway is allegedly \$2.07 million. CORP V.S. Pettigrew at 20.

*Lines of South Plains Switching, Ltd. Co.*, Docket 34890, slip op. at 17 (served Aug. 31, 2007) (Board rejects bids which are not unqualified). The Staton proposal as submitted by CORP has extensive exclusions and qualifications rendering it an unreliable indicator of the partial bridge removal cost. Costs not included in the Staton estimate are:

- permits
- wetland work area protection
- engineered demolition plans
- cofferdams and all other in-water stream protection other than floating silt curtains and floating log or sock booms
- earthwork other than to accomplish bridge removal

CORP V.S. Pettigrew, Attachment 8 at 1. The estimate also assumes the working depth in the water is 20 feet or less at low tide despite the fact that the authorized navigation depth at the Umpqua River bridge is 22 feet. R V.S. Gaul, Ex. 4. Lastly, while CORP claims that it would accept the Staton bid if required to remove the bridges, the Staton estimate is only valid for 60 days, until October 21, 2008, which is before CORP would ever have abandonment authority and which does not fall within the in-water work window for the Siuslaw River of November 1 to February 15 and the in-water work window for the Umpqua River of November 1 to January 31. R.V S. Gaul, Ex. 4. The Port has obtained a supplemental bridge removal estimate from the Staton Companies, with the costs for the exclusions and other items believed necessary for this work provided as additional work items Exhibit 13. As shown by this revised estimated, the true cost to remove the bridges is \$3.644 million to \$4.144 million for the Umpqua River bridge and \$2.780 million to \$3.120 million for the Siuslaw River bridge.<sup>9</sup> Exhibit 13. Therefore, the total salvage cost for both bridges is \$6.424 million to \$7.264 million (not including the required

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<sup>9</sup> The Port did not include the \$187,000 for working in water deeper than 20 feet for the Siuslaw Bridge due to the testimony of Port witness Mike Gaul.

bond) – which is in line with the Port's initial calculation of \$7.529 million from the Application. Application, V.S. Davis (Ex. 6) at 106 and 124.

CORP has also provided a partial bridge removal estimate of \$2 million from L.B. Foster. CORP Response at 47-48; CORP V.S. Pettigrew, Attachment 3 at 1-2. This estimate is only based on the removal of the portions of the bridges over the waterway. Moreover, it is not probative evidence because there are no calculations, explanations, or workpapers supporting the estimate. The estimate consists of nothing more than a bare assertion that the cost would be \$2 million – nothing more. The Board should disregard this unsupported estimate.

CORP's last partial bridge removal estimate, \$2.85 million, was submitted by Timothy Maloney at Edward Kraemer & Sons. CORP Response at 52; CORP V.S. Maloney at 2. Mr. Maloney also asserted that removal of the entirety of both bridges would cost \$4.24 million. V.S. Maloney at 2. The estimates prepared by Maloney are flawed in a number of respects. First, Maloney did not include use of cofferdams in the demolition of the bridges. CORP V.S. Maloney at 6, 13, and 16. As explained by Port witnesses Dana Siegfried and Mike Gaul, cofferdams would be required in the demolition of these two bridges. R.V.S. Siegfried; R.V.S. Gaul. Additionally, the Port has attached a permit from the Army Corps of Engineers for the 2003 rehabilitation on the Coos Bay swing bridge. Exhibit 14. Cofferdams were required in the permit which was also completed under a Nationwide Permit ("NWP"). *Id.* at 27 and 36. Furthermore, in a more recent work project in the Coos Bay estuary also completed under a NWP, there were numerous conditions imposed because of the location of the dock pilings in an Oregon estuary with threatened species. R.V.S. Gaul, Ex. 4, Attachment A. The Board should rely upon the real-world Corps of Engineers permits as an accurate showing of the absolute

minimum environmental mitigation measures that would be required in the removal of the Umpqua and Siuslaw bridges.

Maloney's estimate also fails to adequately provide for lead-based paint abatement. CORP V.S. Maloney at 5-6, 14, and 17. The method proposed by CORP for attempting to prevent lead paint contamination of the two rivers would not be sufficient. R.V.S Siegfried. This is further bolstered by the level of protection required for the Coos Bay railbridge work that involved lead paint. Exhibit 14 at 53. In addition, Maloney improperly omitted transportation costs associated with the disposal of demolition concrete material from the bridges over the waterways; this concrete cannot be used on-site. CORP V.S. Maloney at 14 and 17, and Maloney workpapers (no transportation cost for demolition concrete is included, though it was mentioned earlier). The Army Corps of Engineers permit specifically states that demolition concrete cannot be used in the manner (embankment or "rip rap") proposed by Maloney. Exhibit 14 at 13 and 41. See also R V.S Siegfried, Ex. 5. Fourth, the unreliable nature of Maloney's cost estimate is exemplified by his use of an employment wage projection from Douglas County, Washington, not Douglas County, Oregon. CORP workpaper CORP\_MALONEYWP00007. Lastly, Mr Maloney is from the Colorado office of Edward Kraemer & Sons, and he has not shown that he is familiar with marine environments and work in estuaries such as the Oregon coast. See Maloney work experience with Edward Kraemer & Sons, immediately after the Verified Statement (showing representative projects only in Colorado, Arizona, and Nevada).

**vi. Description of the track assets**

Track assets on the Line include the rail itself, as well as ties, tie plates, joint bars, rail anchors, and other track materials ("OTM") such as spikes, bolts, and washers. Some of the track assets on the Line, such as road crossings and certain bridges, must be removed due to

federal or state law despite the fact that these items have negative net salvage value. V.S. Davis (Ex. 6) at 101-102 and 104-106, attached to Application. The Port originally stated that the Line was previously maintained by CORP to Federal Railroad Administration ("FRA") Class 2 standards, capable of supporting freight train speeds of up to 25 miles per hour. Application at 15. In response, CORP has asserted that the Line is actually a mix of Class 1 and Class 2 track. Verified Statement of Steven Patton (V.S. Patton) at 3. After its on-site inspection and review of the discovery materials, the Port now states that any reduction in the class of track appears linked to the neglect suffered by the Line in the last several years

Mr. Davis's evaluation also revealed that the Line includes 50 turnouts, nine tunnels, 108 bridges, and 129 culverts in the evaluation area. There are believed to be 68 at-grade, highway-rail crossings (41 public and 27 private). There are also six overhead bridge crossings. V.S. Davis (Ex. 6) at 96, attached to Application.

In the Application, Mr. Davis originally found that none of the rail of the Line could be classified as relay quality rail. V.S. Davis (Ex. 6) at 99, attached to Application. He based this conclusion on the limited inspection possible and the available CORP track charts; of course, his evaluation was hampered by the fact that CORP refused to allow the Port to conduct an on-site inspection prior to filing the Application. In light of the inspection conducted by Mr. Davis on August 13-15, 2008, he has now found that 20% of the rail of the Line is of relay quality. R.V.S. Davis, Ex. 1. This new finding is reflected in the Port's revised NLV calculation.

One of the major errors included by both Unitrac and L.B. Foster in their estimates of the value of the track assets results from their incorrect rail weight classification. As explained by Mr. Davis in Exhibit 1, a significant portion of the Line consists of 112-pound rail while very little is 115-pound rail. L.B. Foster included no 112-pound rail, while Unitrac included excess

amounts of 115-pound rail CORP V.S. Pettigrew, Attachment 1 at 9 and Attachment 3 at 2 A curious aspect of the L.B. Foster estimate is that, while supposedly a “real-world” bid, it is based on CORP’s own assertions about the weights of rail on the Line. Compare Attachment 1 to the V.S. of Marc Bader from CORP’s Abandonment Application to Attachment 3 (page 2) to the V.S. of Alan Pettigrew to the CORP Response In other words, the quality, weight, and type of rail assets used by L.B. Foster are identical to those previously asserted by CORP.

Moreover, the critique of RLBA’s work – that it is for the purposes of litigation and, supposedly, unreliable – is irrelevant and meaningless. Virtually all consultants authoring Verified Statements in proceedings before the Board prepare their work for the purposes of those proceedings. In contrast, CORP’s main witnesses on the issue of the Line’s salvage value in the feeder line case and the abandonment proceeding are RailAmerica’s own employees: Alan Pettigrew (feeder line NLV of track assets) and Marc Bader (abandonment NLV of track assets). Lastly, [

] as

well as the fact that their work is also “for the purposes of litigation,” suggest that, if the Board were to consider such an assertion, L.B. Foster and Unitrac are less likely to be neutral than RLBA.

**vii. Calculation of NLV**

In its Response, CORP asserted that, if its abandonment were granted, it would accept the Unitrac bid for salvaging of the Line Mr. Davis evaluated the Unitrac bid closely, and decided to adopt the format it used in order to narrow the differences between the parties and allow an easier comparison by the Board. Mr. Davis also modified some of his steel asset classifications based on his on-site visit and inspection on August 13-15, 2008. After adopting part of the



Unitrac bid format and making the other changes described in the Verified Statement, Mr. Davis applied steel prices from three different dates to show how CORP's delayed abandonment has greatly benefited CORP due to the increase in steel prices.

Mr. Davis first showed the value of the steel assets in September 2004 – the date of the final Milbor-Pita report. He also showed the value of the steel assets in September 2007 – when the embargo began. As exemplified by these numbers, the delayed abandonment has greatly increased the salvage value CORP is trying to receive. In particular, the net value of the steel assets, before subtracting the costs to remove the Umpqua and Siuslaw bridges, is roughly double as of August 2008 compared to September 2007. The Port urges the Board to seriously consider the significant monetary benefit CORP is seeking as a result of the unlawful embargo and the rapid increase in steel prices.

In order to accurately assess the true liquidation value of the Line, Mr. Davis included all removal and remediation costs that would be incurred by any entity interested in salvaging the Line. Mr. Davis included the cost to remove the entirety of the swing bridges over the Umpqua and Siuslaw Rivers. In determining the specific removal costs to employ for these two bridges, Mr. Davis relied upon several sources, including the revised Staton Companies estimate (Exhibit 13).

Mr. Davis also included a rail removal cost of \$14,000 per mile for relay rail and \$12,000 per mile for re-roll and scrap rail R.V.S. Davis, Exhibit 1. As described by Mr. Davis, the cost to remove relay rail is higher than removal of re-roll or scrap rail. The Board should reject the Unitrac bid because it fails to make an allowance for these extra costs in the removal of relay rail. CORP V.S. Pettigrew, Attachment 1 at 8-9.

The Port also notes that the Board has received, and continues to receive, comments to the Environmental Assessment which was issued by the Section of Environmental Analysis on August 15, 2008 regarding CORP's abandonment and discontinuance of service application in Docket AB-515 (Sub-No. 2). Exhibits 19-21. The Port understands that the last day for environmental comments is September 15, 2008. In order to fully account for all environmental costs that would be incurred if the Line were liquidated, the Port requests that the Board include, in its calculation of the Line's NLV, the costs of environmental conditions imposed in the abandonment case.

**b. Discussion of fair market value of real estate**

**i. Mr. DeVoe's appraisal was sound, withstands CORP's criticism, and is the best evidence of record**

In its effort to discredit the real state appraisal prepared by the Port's expert witness Mr. Jay J. DeVoe of J.J. DeVoe & Associates, CORP offered verified statements of two witnesses. Mr. Charles W ("Sandy") Rex ("V.S. Rex") and Mr. Todd N. Cecil ("V.S. Cecil") in its Response. Through his reply verified statement, Mr. DeVoe responds to the erroneous, unfounded, and, at times, specious criticisms of his appraisal methodology and his application of that methodology. At Attachment 2 to his verified statement, Mr DeVoe also provides an independent and unbiased review ("Devoe Review) of the land appraisal submitted by Mr. Rex ("Rex Feeder Appr."). Mr. DeVoe shows that the Rex Feeder Appraisal is not reliable or credible and therefore should be rejected by the Board. Mr. DeVoe's testimony is supported and complemented by the reply verified statement of Mr. James C. Coffey, an Oregon attorney with over 30 years of experience practicing law in North Bend and the surrounding area. In light of his experience, Mr. Coffey discusses the various encumbrances affecting CORP's real property along the Line, and these burdens would be by resident of the region.

**(A) Mr. DeVoe's assumption as to CORP's title**

As instructed by the Port's counsel, Mr. DeVoe made an initial assumption that CORP holds unencumbered fee title to the real property comprising the Line. Contrary to Mr. Rex's criticism, this assumption is not indicative of Mr. DeVoe's sloppiness. Rather, after it became obvious that CORP's property is significantly burdened by timber, mineral, and water reservations and a communications and pipeline easement—which are generally held by UPRR (as successor to SPT)—it was determined that a separate title review would only create additional cost, expense, and delay in the preparation of the Port's Feeder Line Assessment.<sup>10</sup> Moreover, Mr. DeVoe was confident that his use of CORP's valuation maps and tax assessor's maps would provide an accurate picture of CORP's holdings and, in fact, it did. Mr. DeVoe estimated the corridor to consist of 1,853 gross acres, only 7% less than Mr. Rex's calculation of 1,987 gross acres. Rex Feeder Appr. at 5. Mr. DeVoe's estimate of 1,680 acres of "potentially salable area" is even closer to the amount Mr. Rex considered: 1,754 acres. Rex Feeder Appr. at 5. Considering that the Line is 111 miles long, serpentine in nature, consisting of irregular and uneven parcels, the proximity of the results is impressive, and hardly merits Mr. Rex's ridicule.

In his Verified Statement, Mr. DeVoe notes his full disclosure of the extent of his efforts to describe CORP's title in the real estate comprising the Line—an interest that Mr. DeVoe clearly understood to be heavily "encumbered." R.V.S. DeVoe at 22-23. Indeed, Mr. Rex's disdain for Mr. DeVoe's analysis appears to arise from Mr. Rex's own misreading and misquotation of the key finding by Mr. DeVoe. Contrary to his incorrect statement that Mr.

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<sup>10</sup> All three deeds were included in the Addenda to Mr. DeVoe's appraisal, which comprised Volume III of the Port's Feeder Line Application. The Lane County Deed is Addenda Section B; the Douglas County Deed is Addenda Section C; and, the Coos County Deed is Addenda Section D. Discussion of the reservations herein sometimes refers to "SPT" and sometimes to "UPRR" owing to the fact that witnesses vary in referring to SPT, the original grantor, and its successor, UPRR. No confusion is intended as a result.

DeVoe “assumed that CORP owns the [sic] unencumbered fee simple title of the subject” Mr. DeVoe’s Appraisal Report, at page 5, plainly refers to “encumbered fee simple title.” CORP Response, V.S. Rex at 6; R.V.S. DeVoe at 25. Indeed, it is ironic that CORP would make this mistake given the failure of its own real estate title expert and appraiser to recognize, let alone discuss the substantial reserved rights now held by UPRR, which include reservations of timber, mineral, and water rights, and the highly-burdensome pipeline and communications easement. As discussed below, CORP’s witnesses simply missed these issues in their submissions in the Abandonment Proceeding, and belatedly, haphazardly, and incorrectly addressed these issues in this proceeding.

**(B) Mr. DeVoe did inspect comparables**

Mr. Rex mischaracterizes Mr. DeVoe’s inspection of comparable sales, stating that the Port’s witness failed to “actually inspect” comparable sales properties. CORP Response, V.S. Rex at 8. This representation is directly contrary to Mr. DeVoe’s statement, at page 4 of this appraisal that “the comparable sales directly relied on in this appraisal were viewed from adjoining public right of way(s), aerial photographs and/or various maps.” As such, Mr. Rex’s criticism is simply wrong. Indeed, Mr. DeVoe explained in his verified statement that he examined “numerous comparable sales, as well as numerous other sales that were ultimately deemed to be unworthy as comparables.” R.V.S. DeVoe at 24-25. Moreover, as Mr. DeVoe explains, inspection of property from a public roadway is often a fruitless endeavor in rural Oregon because topography and vegetation. R.V.S. DeVoe at 25. Therefore, where inspection was impractical, Mr. DeVoe diligently relied on topographic maps, aerial photographs, and/or data confirmed by the parties involved.

Mr. Rex's criticism is rather disingenuous given the caveat that he placed on the extent of his own inspection: he suggests that he "physically inspected virtually every comparable sale that was accessible." CORP Response, V.S. Rex at 9. Of course, this statement turns on what Mr. Rex considers to be "accessible." The same may be said of his statement on page 2 of his Feeder Appraisal that "all accessible sales were inspected." And, it is clear that whatever inspection was in fact performed may not have helped. With regard to one comparable, Mr. Rex apparently failed to discern that the property was improved with a single-family home, and accessible via a gravel cul-de-sac—key factors not mentioned in his analysis. R.V.S. DeVoc at 28.

**(C) Mr. DeVoc's "Base Homesite Theory" is applicable to this situation and is supported in theory and practice**

Mr. Rex devotes considerable energy toward criticizing Mr. DeVoc's application of "base homesite" theory for considering the corridor's utility and value relative to the abutting (across-the-fence) properties. CORP Response, V.S. Rex at 13-21. As an initial comment, it must be said that Mr. Rex's ridicule of Mr. DeVoc's testimony and his derisive, ad hominem invective is entirely inappropriate in this proceeding. Mr. DeVoc is an appraiser with nearly twenty years of professional experience, holding the highest designations from the Appraisal Institute and the International Right-of-Way Association. His testimony was (and is) offered without any preconceived objective in mind; it is not results-oriented, and, it reflects his professional opinion as a licensed appraiser. R.V.S. DeVoc at 13-14.

Contrary to Mr. Rex's reckless assertion (CORP Response, V.S. Rex at 13) that Mr. DeVoc invented a theory as an "artifice to devalue all of the residential land along the Feeder Line Segment," Mr. DeVoc's methodology finds support, and is vindicated by an authoritative text on real estate appraisal. The Appraisal of Real Estate (12<sup>th</sup> Edition) contains a discussion of

“excess land” and “surplus land” that squarely supports Mr. DeVoe’s professional opinion that the small, irregularly shaped parcels within the corridor would be of little value to abutting landowners, and therefore cannot be accurately valued based on ATF / comparable sales.

Exhibit 28 at 198-199. The leading treatise begins:

A given land use has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of property that represents an optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining site area is either excess land or surplus land.

The treatise goes on to explain the difference between “excess land” on the one hand, and “surplus land” on the other:

Excess land, in regard to an improved site, is land not needed to serve or support the existing improvement. In regard to a vacant site or a site considered as though vacant, excess land is not needed to accommodate the site’s primary highest and best use. Such land may have its own highest and best use or may allow for future expansion of the existing or anticipated improvement. If the excess land is marketable or has value for a future use, its market value as vacant land is added to the estimated value of the economic entity.

According to the leading treatise, “surplus land” is quite different: “Surplus land is land not needed to support the existing improvement and typically cannot be separated from the property and sold off. Surplus land does not have an independent highest and best use and may contribute minimal value.”

The treatise then provides a brief example of showing how “excess land” and “surplus land” should be valued, noting “[i]n this situation, the surplus land would probably still contribute positively to the value of the subject property (because the existing improvements could still be expanded onto the surplus land, but it would also likely be worth much less than

the \$2.00 per square foot price [the price for the example] commanded by vacant land elsewhere in the industrial park.”

The foregoing discussion establishes conclusively that Mr. DeVoe’s method is not unsound, was not invented for purposes of litigation, and has a firm foundation as a recognized appraisal technique. In short, Mr. Rex’s critique of Mr. DeVoe and his method is simply wrong and must be rejected. As explained in his attached verified statement, Mr. DeVoe approached the “appraisal problem” presented by CORP’s right-of-way, and selected a method, which he believed most suitable for resolving the problem, based on his professional training and years of practice. R.V.S. DeVoe at 27-30. With respect to the segments of corridor that were deemed residential in land use, Mr. DeVoe concluded that they would constitute surplus land—“not needed to support the existing improvements—that “would not have an independent highest and best use” and therefore, in conjunction with the SPT reservation of rights, would “contribute minimal value.” As explained in The Appraisal of Real Estate, 12<sup>th</sup> Edition, it was Mr. DeVoe’s prerogative to make this determination: “Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining site area is either excess land or surplus land.” Factoring in the fact that residential parcels would be heavily encumbered by the water, timber, and mineral reservations, and the communications easement (and its no-build provision), Mr. DeVoe estimated that the surplus land would contribute minimal value. Mr. DeVoe’s conclusions are supported by the Reply Verified Statement of James C. Coffey.

As this point, it is appropriate to comment briefly on Mr. Rex’s reckless attacks on Mr. DeVoe. Mr. Rex states that in “34 years of appraising land, teaching appraisal courses and researching the appraisal literature, I have never heard of ‘base homcsite theory.’” CORP

Response, V.S. Rex at 13. While Mr. DeVoc's term may be archaic, the concept he describes—"surplus land"—clearly is not, as demonstrated by The Appraisal of Real Estate. Mr. Rex's failure to recognize the concept is puzzling to say the least. Assuming that Mr. Rex's ignorance is genuine and not a product of ulterior motives, Mr. Rex's failure to recognize Mr. DeVoc's analytical framework raises serious questions about the meaning of Mr. Rex's 34 years of experience, and the caliber of his testimony in this proceeding both in favor of CORP and against the Port. Although the terms "excess land" and "surplus land" are sometimes used synonymously and sometimes reversed as to meaning, they are not foreign concepts as the following case citations make clear: *White v. Washington County Assessor*, TC-MD 010207C at n. 2, (Orc. Tax Ct. Dec. 12, 2001) ("[T]he additional strip of land at issue there would be excess land and, under the theory of contribution, would have added little to the value of the commonly owned homsite."); *McKee v. Dept. of Revenue*, 2004 Orc. Tax Lexis 129 at \*\*9 (Orc. Tax Ct. Oct. 14, 2004) (noting appraiser's use of excess land concept); *Blackbird Farms Apts. v. Dept. of Local Gov't Finance*, 2002 Ind. Tax Lexis 67 at \*7 (n. 4) (Ind. Tax Ct. Oct. 31, 2002) ("Size is generally a less important element of comparison . . . [as m]ost types of development have an optimal site size; if the site is larger, the value of the excess land tends to decline at an accelerating rate . . . Appraisers ordinarily give more weight to comparables that are approximately the same size as the subject property.") (quoting The Appraisal of Real Estate, 10<sup>th</sup> Edition); *International Flavors & Fragrances Inc. v. Union Beach Borough*, 2004 N.J. Tax Lexis 17 at \*\*46-47 (quoting the discussion of surplus land from The Appraisal of Real Estate, 12<sup>th</sup> Edition.); *Four Store Partners v. Holman*, App. No. 97-34024 (Mo. State Tax Comm. May 25, 1999) (discussing the distinction between excess land and surplus land and quoting The Appraisal of Real Estate, 10<sup>th</sup> Edition and The Dictionary of Real Estate Appraisal, 3<sup>rd</sup> Edition).



The Port submits that Mr. Rex's puzzling unfamiliarity with the concept of "surplus land" should cause the Board to scrutinize his testimony with a jaundiced eye.

Indeed, Mr. DeVoe's approach is generally consistent with STB precedent concerning the application of the ATF method in valuing rail corridors in abandonment and feeder proceedings. The Board accepts as an appropriate part of the "across the fence" valuation method adjustments to a parcel's value based on various characteristics and idiosyncrasies, including a parcel's utility and size. *See, e.g., R.R. Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA; R.R. Ventures, Inc.—Acquisition and Operation Exemption—Youngstown & S. R.R. Co Request to Set Terms and Conditions*, 4 S.T.B. 467 (served January 6, 2000) (Adopting as the "appropriate methodology" a "detailed appraisal" that "considered size, shape, topography, adjacent land use, and zoning along with access to logical valuation segments."); *Grand Trunk W. R.R. Inc.—Abandonment—In Macomb and Oakland Counties, MI*, 1998 STB LEXIS 1029, \*16-17 (served December 23, 1998) ("Past abandonment cases have shown that the market value of real estate usually is lower than ATF values when adjustments are made for location, size, and topography."). Defects in title or encumbrances on the subject parcel also affect value. *See, e.g., IL Central R.R. Co.—Abandonment—Between Aberdeen Junction and Kosciusko, In Holmes and Attala Counties, MS; In the Matter of a Request to Set Terms and Conditions*, 1997 STB LEXIS 339 (served March 25, 1997); *R.R. Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA, The Ohio & Pa R.R. Co.—Adverse Discontinuance of Service Exemption—Between Youngstown, OH, and Darlington, PA, In Mahoning and Columbiana Counties, OH, and Beaver County, PA*, 1999 STB Lexis 530, \*5, n.4 (served September 10, 1999) ("in an OFA proceeding.

. . the purchase price must take into account all encumbrances on the title, such as reversionary interests.”).

Finally, two professional articles decidedly support Mr. DeVoe’s method and results. In “Rail Corridor Sales”, Mr. Clifford A. Zoll, MAI observes,

[N]et liquidation value is less than ATF price. Thus an appraiser will determine the ratio of net liquidation prices to ATF prices in other similar cases. These may range from 30% to 75% of ATF prices, requiring a judgment by the appraiser on the appropriate ratio applicable to the subject. Multiplying the ATF value estimate by the appropriate ratio indicates the probable price that can be obtained. This price must then be discounted to reflect the appraiser’s judgment of the administrative costs and the time for liquidation. There may also be parcels that the appraiser believes will not sell and must be abandoned.

Clifford A. Zoll, MAI, “Rail Corridor Sales”, The Appraisal Journal, Pages 379-387 (July 1985)

(emphasis added) (Attached hereto as Exhibit 29). In “Rail Right of Way Valuation”, Frederick

D. Miltenberger, MAI, speaks of his own experience:

In the experience of the author, typical buyers are willing to pay between 40% and 60% of ATF values for agricultural lands in the Midwest. On a parcel-by-parcel basis, considerable variation occurs. The 40% to 60% range represents a typical reaction to right-of-way offerings . . . The reaction of buyers to urban land may be different. In many instances, urban right-of-way is at grade or nearly at grade with surrounding lands, and little, if any, clearing is required. In such cases, a buyer may be willing to pay ATF for that land. Unlike in agricultural areas, productivity is not a consideration in urban settings.

Frederick D. Miltenberger, MAI, “Rail Right-of-Way Valuation”, The Appraisal Journal, Pages

79-85 (January 1992) (emphasis added) (Attached hereto as Exhibit 27). Accordingly, Mr. Rex

improperly criticizes Mr. DeVoe’s use of ATF with appropriate (base homesite or excess land) adjustments.

**(D) Treatment of forest land – forest nominal**

In its critique of Mr. DeVoe’s appraisal, CORP’s witness Todd N. Cecil asserts that Mr. DeVoe mistakenly reduced the value of timber property in Douglas County because “CORP

subsequently re-acquired those timber rights.” CORP Response, V.S. Cecil at 3 (emphasis added). Mr. Cecil goes on to assert that “[s]pecifically, by a Timber Quitclaim Deed dated March 26, 1998, Union Pacific Railroad Company, SPT’s successor, deeded to CORP all of its right, title and interest in and to all timber on the portion of CORP’s right-of-way land located in Douglas County, OR.” CORP Response, V.S. Cecil at 3. An examination of the quitclaim deed reveals that Mr. Cecil’s description is simply incorrect in a critical detail: RailTex Logistics, Inc. (“RailTex”) rather than CORP is the “Grantee” under the deed. Contrary to Mr. Cecil’s representation, CORP did not reacquire the Douglas County timber rights. A RailTex subsidiary did.

While Mr. Cecil glosses over this key fact, the Board should not make the same mistake. In a feeder line proceeding, NLV of the rail line is comprised of the value of the rail assets and real property owned by the incumbent carrier—in this case, that carrier is CORP. Plainly, CORP has not established that it owns the timber rights in Douglas County, and the value of such rights should not be included in the Line’s NLV. Indeed, when the Port purchases the Line from CORP it will obtain the real property subject to all of the reservations currently held by UPRR, as the successor to SP, among others the timber rights in Lane and Coos County. Similarly, with regard to Douglas County, the Port will take the property subject to the timber rights held by RailTex Logistics. The feeder line sale will not affect third-party interests in land. In fact, the Port has no desire to acquire RailTex’s timber reservation, and should not be forced to do so. Accordingly, because the timber rights in Douglas County are held by a third-party, Mr. DeVoe properly estimated the value of real property to reflect CORP’s heavily encumbered fee interest.

After wrongly chastising Mr. DeVoe for his proper treatment of timber rights in Douglas County, Mr. Cecil conspicuously omits further discussion of the timber rights still held by UPRR

in Coos and Lane Counties. The reason is not hard to discern. RailTex's purchase of the timber rights in 1998 affirms that the timber rights in Coos and Lane Counties also have value—an issue that Mr. Rex realized only after filing his appraisal in the abandonment docket and then failed to address properly in this proceeding (discussed below). It was correct for Mr. DeVoe to adjust his valuation based on the timber reservations affecting CORP's land in all three counties.

Mr. Rex's real estate analysis is severely damaged by its inadequate treatment of the reserved timber rights and UPRR's other interests. Like Mr. Cecil, Mr. Rex glosses over the fact that CORP's evidence shows that RailTex, rather than CORP, owns the timber rights in Douglas County. Calling RailTex a "sister company of CORP" (Rex Feeder Appr. at 29), Mr. Rex sidesteps the fact that standard appraisal practice would require him to value the interests separately, meaning that timber lands in Douglas County should be valued subject to the easement held by RailTex. R.V.S. DeVoe at 6-7. Mr. DeVoe observes,

My judgment is informed by past appraisal assignments where I have been instructed by the Oregon Department of Justice that it is proper to conclude that such differences in title establish that unity of title/ownership does not exist in regards to determining Legal Larger Parcel (a consideration important for determining just compensation in cases of eminent domain acquisitions). The Department's position—based on the "Yellow Book" (Uniform Appraisal Standards for Federal Land Acquisitions)—reflects the belief that there are beneficial reasons for entities to separate ownerships (i.e. taxes) so it is unreasonable or inequitable for related but different ownerships to claim unity elsewhere when it suits their interest.

R.V.S. DeVoe at 6.

Indeed, it is obvious that Mr. Rex must have been unaware of SPT's reservations at the time that he prepared the appraisal he prepared in support of CORP's abandonment application. It is only after the Port's expert, Mr. DeVoe pointed out these reservations that Mr. Rex and Ms. Patricia L. Chapman (CORP's title expert) discovered their glaring oversight. At pages 29 – 32,

Mr. Rex's feeder line appraisal offers a newly-minted section "Rights Retained By Southern Pacific Transportation (SPT)" that is wholly absent from his abandonment appraisal. Similarly, Ms. Chapman's feeder line verified statement for the first time discusses the so-called "No Build" clause of the SPT communications and pipeline easement, which was not mentioned in her abandonment verified statement. CORP Response, V.S. Chapman at 2-4. In light of these oversights, CORP's unprofessional criticism of Mr. DeVoc truly rings hollow. Holding CORP to its own standard, the credibility of both of CORP's witnesses must be questioned.

In attempt to cure the omission in his abandonment NLV calculation, Mr. Rex engages in a high-wire act, advocating erroneous methods and conclusions that only further call into question the integrity of his entire appraisal. Alleging that the RailTex transaction is an "excellent comparable for reserved timber rights in Lane and Douglas Counties," Mr. Rex takes the purchase price that RailTex paid to buy UPRR's reserved timber rights in Jackson, Josephine, and Douglas Counties [ ] in 1998 and divides that number by total rail miles in Jackson, Josephine, and Douglas County (223.55) to arrive at a figure of [ ] per mile, which Mr. Rex deems appropriate to apply to the miles of the Line in Lane and Coos Counties. Mr. Rex's "corridor basis" for valuing timber allows him to conclude that the reserved timber rights in Lane and Coos County are worth [ ]. Rex Feeder Appr. at 30. Despite the fact that his analysis has nothing to do with the kind, quality, accessibility, and volume of timber contained on the right-of-way, or comparable sales of similarly encumbered lands, or any other critical factors, Mr. Rex presents his results as legitimate. Mr. Rex offers this as the "best approach" since "the corridor acres, timber acres, and timber volumes were not known for the three counties." Rex Feeder Appr. at 30 (emphasis added) But, if these key factors for the RailTex transaction are indeed "not known," then one may legitimately ask how the parties

(UPRR and CORP) may have arrived at [ ] in the first place, and what that price actually values. A credible appraisal of the encumbered timber lands in Coos and Lane Counties would not involve a “corridor approach,” but would rather seek out comparable sales. Mr. Rex makes no effort to adhere to his professed ATF method, and his “back of the envelope” analysis should be given no weight.

Perhaps anticipating the implausibility of his “corridor” approach, Mr. Rex takes a different tack. As an alternative methodology, he advocates that the Coos and Lane County timber land be valued at its purported “cut-over” value, which he deems to be [ ] per acre. Rex Feeder Appr. at 30. Yet, he offers no explanation how or why “cut-over” land is comparable to land encumbered with a timber reservation—the key distinction being the reserved right held by a third-party not whether timber has been harvested. Simply put, Mr. Rex deliberately makes an “apples to oranges” comparison. Moreover, Mr. Rex’s conclusion is undermined by the testimony of RailAmerica’s Witness Cecil who asserts (albeit without explanation) that CORP—actually RailTex—paid [ ] per acre for the timber reservation in Douglas County. VS Cecil Feeder at 3. Mr. Rex’s “cut-over” approach led him to reduce his “acreage value” in Coos and Lane Counties by a substantially greater amount: [ ] per acre (from [ ] per acre to [ ] per acre), which is impossible to reconcile with the per acre price RailTex paid in 1998. Rex Feeder Appr. at 30. Using the “cut-over” approach, Mr. Rex arrives at an overall reduction of [ ]—a figure that is [ ] higher than the result achieved by his purportedly reliable “corridor approach.”

In a move that only further undermines his credibility, Mr. Rex discards the results of both approaches and settles upon [ ] as the value of UPRR’s reserved timber rights. This figure is [ ] higher than the result of his “corridor approach” and approximately [ ]

] less than his “cut-over” approach. Mr. Rex appears to believe his conclusion is reasonable because his markedly disparate results supposedly represent a floor and ceiling. In fact, they are not a “floor” and a “ceiling.” They are simply the irreconcilable results of two manifestly different and flawed methodologies that do not establish a permissible range, but instead simply cancel each other out. For the foregoing reasons, Mr. Rex’s valuation of timber lands in Coos, Douglas, and Lane Counties must be rejected. Simply put, Mr. Rex was wrong to value timber lands as such because the rights to the timber are held by other persons. He cannot now back-into a credible valuation. At pages 43-45, Mr. DeVoe’s Review critiques and rejects Mr. Rex’s analysis.

**(E) CORP’s recent sales do not undermine Mr. DeVoe’s analysis**

Mr. Cecil’s testimony about recent sales of CORP’s property do not undermine Mr. DeVoe’s assessment of the implications of the reserved mineral, timber, and water rights, and the communications and pipeline easement, or refute other aspects of Mr. DeVoe’s appraisal. For example, Mr. Cecil cites a sale of a parcel to Swanson Brothers Lumber Company at Noti for 150% of its appraised price, as demonstrating that the reserved rights have no affect on the value of its holdings. CORP Response, V.S. Cecil 4-5. In particular, Mr. Cecil highlights an appraisal prepared for the buyer, valuing the property at [ ], in comparison to the sale price, [

]. However, in building his critique, Mr. Cecil apparently failed to closely review the buyer’s appraisal, which is attached to his Verified Statement Mr. DeVoe did. The appraisal—authored by the firm of Charles P. Thompson & Associates, Inc.—valued the property as though it were held by CORP in fee without recognition or analysis of the SPT reservations. Mr. DeVoe notes:

Conversely, my analysis of the appraisal and other Swanson purchase data provided by Witness Cecil indicates that my estimated 50-percent discount may not be high enough. The Thompson appraisal estimates the market value of the subject land in fee simple title (indicated at top of Page 5, Attachment 2). For purposes of the appraisal, "Fee Simple" is defined on the next page as "...a fee without limitations to any particular class of heirs or restrictions, but subject to the limitations of eminent domain, escheat, police power, and taxation." Thus, the Thompson appraisal does not address or acknowledge the SPT reservation of rights, and therefore does not reflect these rights its value conclusion. Absent this key consideration, the appraisal is not a reasonable source of support, as purported by Witness Cecil.

R.V.S. DeVoe at 9 (emphasis added). Indeed, Mr. Cecil virtually confirms that Swanson was unaware of the restrictions when he asserts: "the SPT easements were never discussed by the parties during the course of negotiations." CORP Response, V.S. Cecil at 6. Mr. DeVoe posits that the premium paid was due to the buyer's "excess motivation"; however, he was unable to confirm his belief because he was told by Swanson that "they do not share such information."

R V.S. DeVoe at 9

Mr. Cecil's testimony regarding CORP's recent sales of property in Veneta also fails to discredit Mr. DeVoe's analysis, in particular with regard to the effect of Veneta's Greenway Zoning overlay. Mr. Cecil notes a 2001 sale and a 2004 sale to K. Larson. He opines that CORP's average price per acre "was based on the full prevailing market value of the property." CORP Response, V.S. Cecil at 7. And therefore, he ridicules Mr. DeVoe's consideration of the Greenway and his conclusion that CORP's Veneta property is essentially worthless. Mr. Cecil fails to realize that these sales pre-dated enactment of the Greenway Zoning overlay (2006). This is a significant oversight by Mr Cecil, as an April 19, 2008 news article from The Register-Guard demonstrates: "Veneta Battling Claim of 'Inverse Condemnation.'" The article explains that the foregoing K. Larson sued the City for \$3.6 million dollars on the grounds that the Greenway Zoning overlay renders the property un-developable. R.V.S. DeVoe at 11-12. (Mr.



Rex's appraisal's treatment of Veneta suffers the same flaws and should be rejected, as explained by Mr. DeVoc at page 40 of his Review.)

Considering the foregoing and also Mr. Cecil's erroneous representation that CORP—rather than RailTex—acquired SPT's timber rights in Douglas County, it is plain that Mr. Cecil's testimony fails to discredit Mr. DeVoc's appraisal.

**(F) CORP's title analysis**

As noted above, in both the Abandonment Proceeding and the Fecder Line Proceeding, CORP presents a Verified Statement of Patricia L. Chapman of the Oregon law firm of Gleaves Swearingen Potter & Scott for the purpose of assessing the extent of CORP's title in the real property comprising the Line. In turn, CORP's land appraisal witness, Mr. Rex, purports to rely on Ms. Chapman's conclusions with regard to the CORP's title. Therefore, to the extent that Ms. Chapman's conclusions are incorrect or incomplete, Mr. Rex's appraisal is necessarily called into question.

The perilous nature of the relationship between Ms. Chapman's work and Mr. Rex's appraisal is best illustrated in the abandonment proceeding. In that proceeding, Ms. Chapman attempted to assess whether CORP received fee title for the parcels making up the "Abandonment Segment" of the Line. Ms. Chapman based her work on a review of CORP's "Val Maps" and "Land Schedules" and by examining the "conveyance documents" underlying the Land Schedules. CORP Abandonment, V S. Chapman at 1-2. Using the foregoing sources and relying upon Oregon law, Ms. Chapman concluded that CORP held fee title to each parcel listed in the "Appraisal Summary" table (provided by RMI) where the word "Fee" appeared in the "Title Description" column of table. As a result, Mr. Rex concluded that CORP held 1,357

acres in fee. Another 103 acres were deemed fee less other rights and 216 acres were deemed less-than-fee.

It is now clear that Ms. Chapman was unaware of, or simply failed to consider the effect on CORP's title of SPT's conveyance of the Line's real property to CORP in 1995 subject to significant reservations of water, timber, and mineral rights, and a communications and pipeline easement. Presumably, because of these reservations in Coos, Lane and Douglas Counties, all of CORP's purported "fee" holdings should have been classified as "fee less other rights"—although the meaning of this term is ambiguous. This oversight led Mr. Rex to submit an appraisal that was based on a fundamentally flawed picture of CORP's holdings, in which he utterly failed to address the effect of the reservations and restrictions. "This is an NLV estimate of the fee simple interest, taking into account rights held by others (e.g. roads). Determining whether the railroad holds fee to the property is based solely upon advice provided by Glaves Swearington Potter Scott LLP." Rex Abandonment Appr. at 6. Because Mr. Rex did not have an accurate understanding of CORP's title, and was entirely oblivious to UPRR's reserved rights, his work must be rejected.

In the Feeder Line Proceeding, both Ms. Chapman and Mr. Rex attempted to correct the gaping hole in their respective analyses. Ms. Chapman, for example, added an entirely new discussion to her Verified Statement purporting to address the "no-build" clause contained in the communications and pipeline easement. CORP Response, V.S. Chapman at 3-4. Before reaching the merits of this discussion, a few puzzling facts must be noted: First, Ms. Chapman discusses only the communications and pipeline easement; she does not mention, let alone discuss the implications of the timber, mineral, and water rights.

Turning to the merits of Ms. Chapman's analysis, one must conclude that they are limited, at best. Indeed, it appears that Ms. Chapman is advancing a strained reading of the "no-build" restriction in the pipeline and communications easement that actually *permits* any "permanent" "building" or "structure" to be built—despite the prohibition of such buildings and structures—because the clause only requires "relocation" of any "temporary" "material" or "obstruction." This interpretation distorts the plain meaning of the restriction: Ms. Chapman has missed the critical distinction between "building, structure, or fence" on one hand, and "material or obstruction" on the other. As explained below, these terms are not interchangeable, and blurring the distinction robs the clause of its meaning.

The clause bars the servient tenant (Grantee) from erecting or maintaining any "permanent building, structure, or fence" which would obstruct or interfere with any "then existing or planned Microwave Facilities or other communications facilities or pipelines" of the dominant tenant (Grantor) "located on or planned to be located on the [easement property]." In addition, the servient tenant is restricted such that no "material or obstruction of any kind or character" shall be "stored or maintained on the [easement property] which would "obstruct or interfere with" any "then existing Microwave Facilities or other communications facilities or pipelines" of the dominant tenant "located on the [easement property]." Finally, the servient tenant is required to "cooperate" with the dominant tenant by "relocating any temporary material or obstruction to accommodate future construction by the" dominant tenant. Because Ms Chapman failed to appreciate the clear distinction between "building, structure, or fence" and "material or obstruction" she misread the "no-build" clause. In a nutshell, the clause prohibits any permanent "building, structure, or fence" that would interfere with existing or planned uses. The clause also prohibits storage of "material or obstructions" that would interfere with any

existing use. However, any “temporary material or obstruction” that does not interfere with an existing use is permissible so long as the servient tenant “agrees to cooperate” by “relocating” the “material or obstruction” to accommodate “future construction”—presumably of a “planned” use. (The material or obstruction is “temporary” in this sense because it is subject to relocation.) Contrary to Ms. Chapman’s interpretation, the clause cannot be interpreted to authorize a permanent structure or building because of the requirement to relocate only a temporary material or obstruction. Permanent building, structures, and fences are prohibited outright if they would interfere with then existing or planned uses. The servient tenant would always be required to reasonably defer to the dominant tenant before any construction. Ms. Chapman also does not recognize that by its own terms, the easement is a “floating easement covering the entire Communications and Pipeline Easement Property.” R.V.S. Coffey at 5-6. In so far as Mr. Rex applies Ms. Chapman’s interpretation in his revised appraisal, he only magnifies the error.

Despite the fundamental flaw in the basis for his Abandonment Appraisal—the failure to recognize the substantial reserved timber, mineral, and water rights, and the communications and pipeline easement affecting CORP’s title—Mr. Rex apparently decided against conducting a new appraisal based on the new information. Instead, he inserted a single footnote into his verified statement (note 1) and added approximately three and a half pages of discussion to the end of his appraisal. CORP Response, V.S. Rex at 1; Rex Feeder Appr. at 29 – 32.

The serious flaws in Mr. Rex’s treatment of third-party timber rights are discussed above and will not be repeated here. But Mr. Rex’s assessment of the implications of the communications and pipeline easement must be discussed in more detail. Mr. Rex concludes: “Based on the language of the restriction and upon comparable sales that include portions of the areas influenced by the retained rights, there is no evidence of a diminution in ATF value as a

result of this communication and pipeline easement.” Rex Feeder Appr. at 32. This conclusion stands in market contrast to the Board’s understanding: “the existence of fiber optics cable easements generally has a negative impact on land value.” STB Docket No. AB-459 (Sub-No. 2X), *Central Railroad Company of Indiana—Abandonment Exemption—In Dearborn, Decatur, Franklin and Ripley, IN*, 1998 STB Lexis 121 (Served May 4, 1998). Indeed, the Board’s understanding is shared by Mr. Coffey, who testifies that the existence of the pipeline and communications easement would (1) “significantly cloud title” to parcels within the subject line, adversely affecting the ability of abutting owners to obtain financing, and (2) interfere with their ability to obtain title insurance. R.V.S. Coffey at 6. Ms. Chapman did not mention the “floating” nature of the easement. Because of the foregoing two factors, Mr. Coffey concludes that the pipeline and communications easement would reduce the amount an abutting landowner would be willing to pay. R.V.S. Coffey at 6.

Mr. Rex, by contrast, relies on the incomplete, if not incorrect advice of Ms. Chapman, and the testimony of RailAmerica’s witness Cecil. Mr. Cecil asserts that in recent sales of CORP property that could be affected by the pipeline and communications easement were sold at ATF value. CORP Response, V.S. Cecil at 5-6. Mr. Cecil goes even further, stating for one sale that “the SPT reservations were never discussed by the parties during the course of negotiations[.]” CORP Response, V.S. Cecil at 6. Of course this statement—repeated by Mr. Rex—proves too much: if the SPT reservations were never discussed, then presumably their affect on the value of the land was never analyzed, and is most likely not captured in what was purportedly a fair market price. Mr. Cecil’s statement and Mr. Rex’s derivative analysis would be far stronger if the SPT reservations were discussed because that would indicate that the buyer had full knowledge and paid accordingly.

With even less analysis, Mr. Rex dismisses the significance of the mineral and water reservations. Because “no mining, or oil and gas extraction is taking place in the area” he concludes, “the retained right has no value.” Rex Feeder Appr. at 26. So too for the water rights: “SPT retained the water rights on the property, which is considered to have no effect on the value of the subject property because water rights in this area are owned by the State.” Rex Feeder Appr. at 26. The Port’s witness, Mr. Coffey, an attorney with over 30 years of experience practicing in and around the City of North Bend presents a competing view. Because the timber and water reservation includes “a perpetual right-of-way and right of vehicular and pedestrian access over, under, across and through the Property” for purposes of the reserved right, Mr. Coffey testifies that any use of the land by the servient estate—the purchaser from CORP—would carry a significant litigation risk:

About the only thing that can be said with any certainty is that the Retained Rights and Communication and Pipeline Easement now held by SPT and RailTex create a substantial and real risk of future litigation over the a landowner’s use of any of the property purchased from CORP. This risk of litigation can only be avoided by a landowner complying strictly with the express language contained in the deeds from SPT to CORP: not erecting any permanent building, structure or fence in the Communications and Pipeline Easement Property or in the land covered in the Retained Rights.

R.V.S. Coffey at 8. Ultimately, Mr. Coffey concludes that Mr. DeVoe presented a more compelling and reliable appraisal of the real estate underlying the Line:

The existence of the Communications and Pipeline Easement and Retained Rights were recognized by witness DeVoe in his Verified Statement and Appraisal and were reflected in his valuation of CORP property. Conversely, these rights were not recognized or discussed by witness Rex until CORP submitted its Response in the Feeder Line Proceeding, and in the second RMI appraisal were addressed in a *highly unorthodox manner*. The Board can, and should conclude that the value given by witness Rex for the CORP property is artificially high, given the nature and extent of the rights retained by SPT in its deeds to CORP. Since witness DeVoe did take into account the rights retained by SPT in his appraisal, his

**Verified Statement and appraisal is more accurate and believable than that of witness Rex**

**R.V.S. Coffey at 8**

- ii. Mr. DeVoe's unbiased and professional review of Mr. Rex's appraisal shows that it is not credible and reliable and should be rejected by the Board**

**At the Port's request, Mr. DeVoe prepared an Appraisal Review of the appraisal that Mr. Rex submitted on behalf of CORP in the Feeder Line Proceeding. Mr. DeVoe's review is provided as Attachment 2 of his Verified Statement.**

**At the outset, it is important to describe the manner in which Mr. DeVoe approached the task of examining Mr. Rex's work. Contrary to the approach adopted by Mr. Rex, which does not comply with the recommendations of The Appraisal Institute, Mr. DeVoe reviewed Mr. Rex's appraisal in a professional and independent manner without regard to the conclusions that he himself reached regarding the value of the real property comprising the Line. While Mr. DeVoe obviously developed knowledge of the Line from his own work, he conducted his review as a stand-alone matter. In other words, he critiqued Mr. Rex's work on its own terms and upon its own merits without a preconceived result in mind. Although Mr. DeVoe believes that Mr. Rex employed an incorrect analytical framework, Mr. DeVoe strived to critique his work within that framework. Ultimately, Mr. DeVoe reached the conclusion that under its own terms, Mr. Rex's appraisal is not reliable and should be rejected. R.V.S. DeVoe at 3.**

**Mr. DeVoe's Appraisal Review, attached to his Verified Statement, describes in detail the many errors, inconsistencies, and ambiguities in Mr. Rex's approach and conclusions that render his appraisal unreliable. Accordingly, only key problems will be presented here in summary format:**

**(A) Mr. Rex selected an improper analytical framework**

As explained in his appraisal review, Mr. DeVoe believes Mr. Rex's unmodified ATF methodology is not directly applicable to the task of appraising the real estate underlying the Line. The flaw in Mr. Rex's ATF approach is that it does not take into account the potential utility of the subject parcels to the abutting landowners who are the most likely purchasers. It must be remembered that the segments are small, irregular in shape, and subject to substantial reserved rights that inherently diminish their utility. Mr. DeVoe observes: "RMI has divided the subject into segments in terms of land type for ATF valuation, but not undertaken the required step of considering the property in terms of likely disposition parcels and the contributory utility/value provided to the abutter by the subject." DeVoe Review at 7. The effect of this analytical shortcoming is to overstate the sale prices that the segments would command in the marketplace: "ATF values can be used as a starting point, but for net liquidation value, but the analysis must recognize value discounts for size, shape, and access. Appraiser Rex has relied on ATF value estimates without discounting the subject's limited utility and therefore he has not used correct appraisal methodology." DeVoe Review at 8.

**(B) Mr. Rex did not comply with relevant Uniform Standards of Professional Appraisal Practice ("USPAP")**

USPAP Standards Rule 1-3(a) requires, in part, that an appraiser identify and analyze the effect on use and value of existing use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate and, market trends. DeVoe Review at 11. Despite this requirement, Mr. Rex's discussion of market trends, for example, is confined to two brief paragraphs on pages 6 and 9 of his appraisal in which he identifies a 6% downward trend in the residential market for Lane, Douglas and



Coos Counties, and then declines to apply this trend because some listing prices are purportedly higher than some of his comparables. DeVoe Review at 12. Mr. Rex does not identify the source of his 6% figure; explain why it might be valid for all communities within the three counties, or explain how isolated, higher listing prices indicate that Southwestern Oregon is immune from national downturn in the housing market. It is also noteworthy that despite using comparable sales dating from 2004 or older, Mr. Rex offers no discussion of past versus present market conditions, and consequently makes no adjustment in this regard to his comparable sale data. DeVoe Review at 12. "The detail of market trends is inadequate relative to the sales used. Only the residential market conditions for the past year have been addressed, and Mr. Rex provides a general figure of 6% for the entire subject line. Only 4% of the sales used occurred in Year 2008. Over 70 percent of the residential sales are estimated to have occurred prior to the past year market trend mentioned by the appraiser. Even assuming that the general figure is correct, and again no source is offered, a prudent appraiser would have adjusted the comparable sales in order to reflect for this market trend." DeVoe Review at 18-19. Also of significance is the fact that despite the fact that timber properties make up a significant portion of the ATF properties, Mr. Rex failed to mention, or let alone address conditions in the regional timber market.

Similarly, Mr. Rex appears to have ignored USPAP Standards Rule 1-6(a) which states that an appraiser must reconcile the quality and quantity of data available and analyzed within the approaches used. As it sounds, the reconciliation process is a key element of the appraisal through which the appraiser conducts an internal quality control. DeVoe Review at 13. Mr. Rex's work does not appear to reflect this process, leading him to offer peculiar results. For example, the communities of Mapleton and Swisshome are approximately 6 miles apart, along

the same highway and river. Both may be considered small, and remote. Yet, Mr. Rex presents the conclusion that residential land in Mapleton is worth [ ] per acre and five times his result for Swisshome ([ ] per acre). Puzzling disparities also exist in Mr. Rex's valuation of timber properties, which he refers to as "acreage." In Douglas County, acreage is valued at [ ] per acre. In Coos and Lane Counties, acreage commands [ ] per acre—about double the value of the county in between. In Mr. DeVoe's local experience in Oregon, these results are peculiar. Mr. Rex's apparent failure to engage in a reconciliation process leaves the results unexplained.

**(C) Mr. Rex defies his own ATF methodology and creates a land use that should not exist**

Mr. Rex puts three corridor segments into his Land Use 9, "Waterfront Residential." A close examination reveals that none of the segments are waterfront properties because they are separated from the Siuslaw River by State Highway 36. DeVoe Review at 16 and 26. The Line is west of the state highway, which is west of the river. Under Mr. Rex's own ATF rules, as explained on page 33 of his Feeder Verified Statement, the segments at issue should be associated with the abutting properties to the west, rather than the other side of the highway. As such, Mr. Rex creates a land use that should not exist and wrongly applies an extremely high per acre price ( [ ] ).

**(D) Mr. Rex makes and applies frequent "leaps" in his analysis without adequate explanation and support**

In his detailed and compelling appraisal review, Attachment 2 to his Verified Statement, Mr. DeVoe identifies numerous instances throughout Mr. Rex's analysis where Mr. Rex makes assumptions or offers conclusions that are unexplained and unsupported. Because of Mr.

DeVoe's extensive documentation, only a few such instances will be examined. By themselves, they present a disturbing pattern:

- Mr. Rex's Land Use 25, "Campsite" is a prime example. Mr. Rex states: "No recent sales of camp site/trailer park sites were obtained. These segments were valued at the same price as for residential development derived from single-family residential lot prices." Rex Feeder Appraisal at 19 (emphasis added). No further analysis or explanation is provided. Mr. Rex does not inform the reader how or why his single-family residential comparables are relevant, or similar to the ATF properties or the subject parcels. Yet, Mr. Rex concludes to a value of [ ] per acre. DeVoe Review at 10-11; 34-35.
- Mr. Rex's treatment of Swisshome is equally puzzling due to unexplained leaps. For his Land Use 5 "Swisshome Residential," Mr. Rex arrives at a price of [ ] per acre. Rex Feeder Appr. at 11. Assuming that this valuation is correct—in fact, it is not because Mr. Rex misstates the acreage and price per acre of his single comparable sale—Mr. Rex makes another unexplained leap in applying that value to the Land Use 6 "Swisshome Commercial." DeVoe Review at 24. He purports, "minor commercial ATF land use in Swisshome is intermixed with the town's residential uses and shows little difference in value." Rex Feeder Appr. at 11. Based on one incorrectly-reported "residential sale" and no "commercial" sales, Mr. Rex has no apparent basis or justification for his decision. DeVoe Review at 24-25. As Mr. DeVoe notes, "[a]s a general matter, I believe that it is completely unorthodox to equate commercial and residential, and doing so requires a full explanation of the reasoning[.]" DeVoe Review at 25.
- Yet another leap appears in Mr. Rex's treatment of Land Use 14 "Commercial – Rural Waterfront Commercial." The purported comparable for this valuation is a rural residential sale, relied upon because it is "between the two segments." Rex Feeder Appr. at 15. Mr. Rex assigns a 25% premium because of "superior" location, water frontage and land use. Rex Feeder Appr. 15. Absent from his analysis is any description of the location, water frontage, and land use that render the parcel "superior" and, why, in turn "superior" warrants a 25% premium. Mr. DeVoe notes: "[T]his is grossly inadequate appraisal practice. . . In my experience, there typically would be very little if any association between land values for these types of properties. If there is some in this instance, then it certainly should be explained[.]" DeVoe Review at 28.
- For his Land Use 26 "Lakeside Residential" Mr. Rex concludes—without explanation—to a per acre price of [ ]. Ignoring for present purposes the computational errors identified by Mr. DeVoe on page 35 of his review, Mr. Rex's price is above his arithmetic mean ( [ ] ) and his median ( [ ] ). Again, Mr. Rex provides no explanation of this upward departure.

Simply put, Mr. Rex's leaps establish a pattern of cutting corners and failing to support or explain his conclusions. For this reason alone, his appraisal cannot be regarded as credible or reliable, and should be rejected in its entirety by the Board. Mr. DeVoc's highly-detailed, comprehensive, and compelling appraisal should be accepted as the best evidence of record.

**2. Estimate of going concern value**

In its Application, the Port showed that the Line has no going concern value ("GCV"). Application at 23-29. As mentioned above, CORP has agreed that the Line should be valued on the basis of the NLV. CORP Response at 6. Therefore, the Port will not provide any additional evidence or argument regarding the GCV of the Line.

**E. 49 C.F.R. § 1151.3(a)(5) - An offer to purchase the line at the higher of the two estimates submitted pursuant to paragraph (a)(4) of this section.**

The Port offers to purchase the Line at its NLV of \$14,233,031<sup>11</sup> as set forth herein. Due to the rehabilitation needs of the Line, the ongoing deterioration of the Line, the Port urges the Board to create an escrow account as described in Section IV of this Reply, and to allow the escrow account to be increased based on the supplemental evidence the Port will submit on September 30, 2008 pursuant to the Board's recent decision.

As stated in the Application at page 47, the Port reserved right to seek STB assistance with respect to certain agreements between CORP and UPRR (as successor to Southern Pacific). There is one provision of the Southern Pacific sale agreement that the Port believes must be stricken by the Board because it conflicts with the feeder line statute.

If the Board permits the Port's acquisition of the Line, the Port respectfully requests that the Board make clear in its final decision that the Port is statutorily required to pay the constitutional minimum value of the Line, [[

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<sup>11</sup> See footnote 2.

]] by which CORP purchased the Line from the Southern Pacific. See Sale Agreement (dated Nov. 21, 1994), attached as Exhibit 2 to CORP's Show Cause Response ("Sale Agreement"). In the 1994 sale of the Line to CORP, [[

]] the purchase price in a Feeder Line Acquisition is statutorily set by the Board under the terms of 49 USC § 10907—not by third parties under the terms of past sale agreements.

Under the Supremacy Clause, U.S. CONST. art. VI, cl. 2, the provisions of 49 USC § 10907 preempt any conflicting contractual rights held by prior owners of a line subject to a Feeder Line Acquisition. See *PYCO Industries, Inc.—Feeder Line Application—Lines of South Plains Switching, Ltd Co.* Docket 34890, slip op. at 33-34 (Served August 31, 2007) (hereinafter, "*PYCO*") (citing the express preemption provisions at 49 USC § 10501 (b)). In *PYCO*, the Board decided that a Feeder Line Acquisition involving a sale by South Plains Switching, Ltd. Co. ("SAW") to PYCO Industries was not subject to a right of first refusal retained by BNSF after it sold the line to SAW years earlier. *Id.* BNSF had argued that SAW could only convey the property interests SAW had in the subject line and that its interests were circumscribed by BNSF's contractual right of first refusal. *Id.* at 34 The Board, however, rejected that argument, noting that BNSF's right of first refusal conflicted with provisions of the statute, including those that exclude Class I railroads from section 10907 acquisitions. *Id.* at 33

“We do not have the authority,” the Board said, to “permit BNSF’s contractual rights to take precedence over the feeder line provisions of our statute.” *Id.*

Like BNSF in the *PYCO* case, [[

]] Such a claim would be in direct conflict with at least two provisions of section 10907(b):

First, [[

]]

Second, [[

]] would conflict with the section 10907 (b) requirement that the Board set the Line’s purchase price based on the “constitutional minimum value formula mandated by Congress (*i.e.*, that the purchaser must pay either the “net liquidation value . . . or the going concern value of [the] line, whichever is greater.”). 49 USC § 10907 (b)(2). The Board has consistently applied this formula in the past, determining the proper valuation for feeder lines without reference to former purchase prices set by third parties. Therefore, the Port requests that

the Board make clear as part of its final decision in this proceeding that [[  
]] in this Feeder  
Line Acquisition.

**F. 49 C.F.R. § 1151.3(a)(6) - The dates for the proposed period of operation of the line covered by the application.**

In its Application, the Port noted that it desires to commence operations on or about January 1, 2009. Application at 30. No party has questioned or objected to the dates proposed by the Port. As a brief review, commencement of operations depends upon granting of the Application by the Board and completion of the sale of the Line. Most importantly, initial operations on the Line will be restricted to the non-embargoed section due to the rehabilitation needs of the embargoed, inactive portion of the Line. Operations will begin on the entire Line once rehabilitation of the Line is complete. For purposes of the Application, the period of operation of the Line is the three-year period from January 1, 2009 until January 1, 2012. As the Port stated previously, the intention is to acquire the Line so that responsive, reliable, and efficient rail service will be restored for the whole Line into the foreseeable future.

**G. 49 C.F.R. § 1151.3(a)(7) - An operating plan that identifies the proposed operator; attaches any contract that the applicant may have with the proposed operator; describes in detail the service that is to be provided over the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least 3 years from the date of acquisition.**

No party has questioned or objected to the Port's evidence on the proposed operating plan or the choice of a rail operator for the Line. As stated in the Port's Application and Supplement, numerous established short line railroads have expressed interest in operating the Line. Application at 30-35; Supplement at 3-9. In the time period since the Supplement, the Port has issued a Request for Proposals ("RFP") regarding rail operations on the Line. Attachment A to

Exhibit 6. The RFP was sent to various short line railroads as well as all that expressed interest in operating the Line. Exhibit 6 also includes the Reply Verified Statement of Charles Banks and Gene A. Davis ("R.V S. Banks/Davis"), which describes the specific steps that the Port must take to commence rail operations on the Line.

- H. 49 C.F.R. § 1151.3(a)(8) - A description of the liability insurance coverage carried by applicant or any proposed operator. If trackage rights are requested, the insurance must be at a level sufficient to indemnify the owning railroad against all personal and property damage that may result from negligence on the part of the operator in exercising the trackage rights.**

The Port provided evidence of its insurance coverage and plans for insurance coverage in the Application, and no party has objected or disputed the Port's evidence; hence, no reply is necessary. Application at 35.

In its Application, the Port noted that CORP formerly utilized and continues to utilize certain trackage rights in conjunction with its service on the Line. Application at 34-35. CORP operates on UPRR track between Cordes (MP 763.13) and Coquille (MP 786.5) to access shippers at the end of the Line. Meanwhile, in the Eugene area, CORP's interchange with UPRR is facilitated by trackage rights between Danebo (MP 652.11) and Springfield Junction (MP 644.3). The Port continues to note that, if acquisition of the Line is successful, the Port will work with UPRR to determine an appropriate interchange location in the Danebo/Eugene area. Additionally, the Port is amenable to operating on the Cordes to Coquille segment, and will discuss this issue with UPRR. The Port will work with UPRR to agree upon appropriate insurance and indemnification provisions to cover these trackage rights.

- I. 49 C.F.R. § 1151.3(a)(9) - Any preconditions (such as assuming a share of any subsidy payments) that will be placed on shippers in order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Board approval.**



The Port has previously provided significant information regarding its discussions with shippers regarding how to facilitate the feeder line acquisition and future rail line operations. Application at 36-37; Supplement at 9-10. These discussions have included consideration of the per-car payment that will be necessary to make rail operations possible. The Port continues to work with public officials in Oregon and Washington, D.C. to try to obtain additional sources of funding for this Line.

The Port plans to have an "open book" policy with the shippers to the extent permitted by law and to engage the shippers in regular meetings regarding the service on and financial performance of the Line. V.S. Bishop (Ex. 2) at 70-71, attached to Application. As has been noted already, the Port's interest in the Line is based on preserving rail-dependent jobs and providing economic development opportunities for the region. Application at 7-8. The Port desires to work with shippers to make the rail line successful so that everyone benefits, and most shippers have been supportive of the Port's efforts thus far. Application at 41-42; Exhibits 11-24 to the Application. See also comments from the Hearing.

- J. 49 C.F.R. § 1151.3(a)(10) - The name and address of any person(s) who will subsidize the operation of the line.**

No party has objected to or disputed the Port's evidence on this point. Therefore, no reply is necessary.

- K. 49 C.F.R. § 1151.3(a)(11) - A statement that the applicant will seek a finding by the Board that the public convenience and necessity permit or require acquisition. (i) If the applicant seeks a finding of public convenience and necessity, the application must contain detailed evidence that permits the Board to find that: (A) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line; (B) The transportation over the line is inadequate for the majority of shippers who transport traffic over the line; (C) The sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line; (D) The sale of the line will not have an adverse effect on the overall operational performance of the rail**

**carrier operating the line; and (E) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.**

In this case, the majority of the Line is currently designated Category 1 on CORP's SDM, meaning that the Port does not need to meet the public convenience and necessity standard for the embargoed portion of the Line. 49 USC §10907(b)(1)(A)(ii). In its Application, the Port included eight pages of argument which shows that the public convenience and necessity permit or require the sale of the entire Line, including the currently active, non-embargoed portion. Application at 37-45. The Port's evidence included support from most of the current or recent shippers on the Line and all shippers the active portion of the Line. Application at 41-42; Exhibits 11-24, attached to Application.

Nevertheless, CORP states that it does not agree that the public convenience and necessity require or permit the sale of the currently active part of the Line CORP Response at 5 (note 3). However, CORP has not offered any evidence in support of its contention. Furthermore, CORP has also stated that it is willing to sell the active part of the Line if the Port's Application is approved. Ultimately, then, the Port need not reply to the CORP Response.

Comments on the Application from the Coos-Siskiyou Shippers' Coalition ("CSSC") reveal further support for the Port's position that the public convenience and necessity require or permit the sale of the Line to the Port. CSSC Comments at 4. Similarly, the State of Oregon also expressed strong support for the Port's Application. Oregon Comments at 2-4, 10-11, and 15. The Comments of the State of Oregon also described, in detail, the support for the Port's Application from various elected officials in Oregon. Oregon Comments at 6-7. Moreover, the overwhelming support for the Port's Application at the Board's hearing in Eugene further

obviates the need to provide any further reply on the public convenience and necessity for ordering the sale of this Line.

- L. 49 C.F.R. § 1151.3(a)(12) - A statement detailing applicant's election of exemption from the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected.**

In its Application, the Port stated that it does not seek exemption from any provision of Subtitle B of Title 49 of the U.S. Code. Application at 45-46 The Port intends that the Line will be operated subject to the requirements of federal law and under the jurisdiction and oversight of the STB. No party has commented on this issue, and no reply is necessary.

- M. 49 C.F.R. § 1151.3(a)(13) - A description of any trackage rights sought over the owning railroad that are required to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including full explanation of how the estimate was reached. The description of the trackage rights shall include the following information: Milepost or other identification for each segment of track; the need for the trackage rights (interchange of traffic, movement of equipment, etc.); frequency of operations; times of operation; any alternative to the use of trackage rights; and any other pertinent data. Trackage rights that are necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.**

The Port previously stated that it does not believe it will be necessary to obtain any trackage rights over CORP. Application at 46. No party has commented upon or disputed the Port's prior statements on this issue, and no reply is necessary.

- N. 49 C.F.R. § 1151.3(a)(14) - If applicant requests Board prescribed joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement that must be established. The description must contain the following information: (i) The railroad(s) involved; (ii) The estimated revenues that will result from the division(s); (iii) The total costs of operating the line segment purchased (including any trackage rights fees); (iv) Information sufficient to allow the Board to determine that the line sought to**

**be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year; and (v) Any other pertinent information.**

In its Application, the Port did not request that the Board prescribe joint rates, but the Port did note that most of CORP's revenue from the Line resulted from a division of rates agreement with UPRR. Application at 46-47. The Port also stated that CORP has made an issue of the amount of compensation received from UPRR. The Port has had some additional contact with UPRR over the past two months, and the Port is still hopeful that an appropriate and fair arrangement can be agreed that would cover the Port's relationship with UPRR in the event the Application is successful. If negotiations with UPRR reach a stalemate, the Port may seek Board assistance

For the purposes of this Reply, no party has commented upon the Port's evidence on this matter, and no reply is necessary.

**O. 49 C.F.R. § 1151.3(a)(15) - The extent to which the owning railroad's employees who normally service the line will be used.**

The Port previously stated that it will use reasonable efforts to give priority consideration to qualified employees of CORP who work or worked on the Coos Bay Line in meeting its staffing needs to provide service on the Line. Application at 47. No party has commented on the Port's evidence on this point, and no reply is necessary.

**P. 49 C.F.R. § 1151.3(a)(16) - A certificate stating that the service requirements of Sec. 1151.2(a) have been met.**

A Certificate of Service is provided in this Reply immediately following the signature of its counsel. The Port states that it has complied with the service requirements set forth at 49 C.F.R. § 1151.2(a).

**IV. THE BOARD SHOULD ORDER PART OF THE PURCHASE PRICE TO BE PLACED IN ESCROW DUE TO CORP'S ONGOING NEGLECT OF THE LINE**

**A. Creation of an escrow account is justified**

In its Comments filed August 28, 2008 in Docket AB-515 (Sub-No. 2), the Port described, at length, the need for the Board to create an escrow account to fund repairs to the Line that should have been done by CORP over the previous four or more years.<sup>12</sup> Port Comments at 19-20, filed in Docket AB-515 (Sub-No. 2). The Port explained that CORP had extensive notice of the condition of the tunnels throughout its ownership of the Line, yet CORP ignored critical tunnel maintenance needs recommended by experts while encouraging public investment in the Line. Port Show Cause Reply at 11-22; Port Comments at 17-20, filed in Docket AB-515 (Sub-No. 2). CORP delayed its abandonment by improper use of the embargo process, which is meant for catastrophic events such as wash-outs, and now is on the verge of a financial windfall due to the recent rapid increase in steel prices. Port Show Cause Reply at 9-11; Port Comments at 20-23, filed in Docket AB-515 (Sub-No. 2). After having benefited by ignoring the Line's critical maintenance needs, CORP now seeks the salvage value of the Line – thereby leaving over 5,000 carloads per year without rail service.

The creation of an escrow account will allow the shippers and communities of southwestern Oregon to recover from CORP's actions over the past several years, thereby giving these shippers and communities the chance to make the rail line succeed. Without an escrow account, the future of the rail line would be in grave doubt – as the Port would be forced to make millions of dollars to repair the tunnel neglect that has occurred during CORP's ownership of the

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<sup>12</sup> In its Application, the Port requested that the Board order CORP to return the tunnels to a serviceable condition or compensate the Port for their repair. Application at 48-54. Creation of an escrow account in the amounts described in this Reply would adequately meet the Port's request.

Line An escrow account is, therefore, necessary to support the public interest and fulfill the purpose of the feeder line statute, which is the continuation of rail service. *Consolidated Rail Corporation v. Interstate Commerce Commission*, 29 F.3d 706, 712 (D.C. Cir. 1994); *Railroad Ventures, Inc. v. Surface Transportation Board*, 299 F.3d 523, 530 (6<sup>th</sup> Cir. 2002). An escrow account has previously been used by the Board in this manner, and the Board's action was judicially approved. *Railroad Ventures*, Docket AB-556 (Sub-No. 2X), slip op. at 19 (served Oct. 4, 2000), *affirmed Railroad Ventures v. STB*, 299 F.3d at 559-560 (6<sup>th</sup> Cir. 2002).

The situation facing the Board implicates the common carrier obligation and several crucial aspects of the Board's regulatory oversight of railroads. Port Comments at 19-27, filed in Docket AB-515 (Sub-No. 2). CORP's actions over the past several years warrant the creation of an escrow as described herein so that a key piece of rail infrastructure is not lost forever. As stated many times in these related proceedings, CORP neglected critical maintenance needs for several years while accepting public investment and representing that rail service would continue indefinitely into the future. While the neglected maintenance finally caught up with CORP, an embargo was declared yet no action was taken to repair the tunnels. Finally, once the price of steel had more than doubled from the date of the embargo, CORP finally amended its SDM, switched to an abandonment strategy, and announced its intention to liquidate the Line. CORP's actions over the past few years have simultaneously violated the common carrier obligation, ignored the purposes of the SDM process, abused the embargo authority, taken advantage of the abandonment option, and greatly hampered the feeder line provisions.

More importantly, while the Port is sympathetic to the plight faced by many shortline railroads, especially since the Port intends to own one soon, this case is not about other shortlines. Furthermore, this case is not really about how much Mr. Lundberg claims to have

spent on the Coos Bay Line.<sup>13</sup> This case is fundamentally about process and the letter and spirit of the Board's Statutes. As discussed above, CORP had a regulatory option that it should have used years ago – the SDM – to provide appropriate and timely notice that this Line was being de-emphasized such that embargo (without a catastrophic event or Act of God) would eventually be necessary due to neglect.

**B. The escrow fund should include \$12.699 million, which CORP has asserted is necessary to reopen the Line**

The escrow fund should include sufficient money to return the Line to a serviceable condition, thereby including all repairs necessary to “make serviceable any segment” of the Line that CORP “allowed to become unserviceable during its ownership.” *Railroad Ventures*, Docket AB-556 (Sub-No. 2X), slip op. at 5 (served Nov. 9, 2001). CORP has previously asserted that \$12.699 million is necessary to reopen the Line. This amount consists of

- \$2.86 million to conduct immediate repairs to Tunnels 13, 15, and 18 that CORP's tunnel contractor Shannon & Wilson said were necessary to reopen the tunnels. Exhibit 25 at 5 and 7-8. (this Exhibit was also attached to the Port's Show Cause Reply as Exhibit 23)
- \$6.75 million to conduct critical bridge repairs that CORP's bridge contractor Osmose said must occur “as soon as possible” due to “unsafe” bridges that “could cause failure at any time.” Exhibit 25 at 5 and 7.
- \$2.42 million to engage in “require[d] tie replacement.” Exhibit 25 at 5 and 7.
- \$0.669 million to conduct surfacing of ties. Exhibit 25 at 5 and 7.

It must be emphasized that the above figures were developed by CORP's tunnel experts (Shannon & Wilson), CORP's bridge experts (Osmose), or CORP itself in the autumn of 2007. CORP stated that these repairs are a required precursor to the resumption of rail service Exhibit 25 at 7. Given that nearly a year has passed since CORP or its experts devised these figures, it is likely that the repair expenses required today would be even greater. Lastly, the figure of

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<sup>13</sup> While Mr. Lundberg provides numbers regarding CORP's alleged investments in the Coos Bay Line, CORP has consistently claimed in discovery that CORP does not maintain data by branch. Furthermore, CORP has refused to provide system-wide data to allow the Port to verify CORP's claims. Therefore, CORP's numbers are unsupported by any evidence.

\$12.699 million is inherently conservative because, elsewhere, CORP stated that \$27.1 million is needed "To Reopen the Coos Bay Line, and maintain the Status Quo service levels." Port Show Cause Reply Exhibit 35 at 8.

Extensive engineering studies form the basis for at least the two largest elements of the escrow figure. By now, the Board is well aware of the 2007 Shannon & Wilson tunnel report, which was based on a 5-day inspection in March 2007 as well as a one-day return visit in July 2007. For the Board's convenience, the Port has attached the Shannon & Wilson Report from July 16, 2007 at Exhibit 22, the detailed spreadsheets describing the repair needs of the tunnels at Exhibit 23, and Shannon & Wilson's follow-up letter from September 21, 2007 at Exhibit 24.

In addition, Osmose conducted a bridge inspection for CORP in early 2007 when it uncovered a multitude of repairs that needed to be done "as soon as possible" due to "unsafe" conditions on numerous bridges that could "cause failure at any time." Exhibit 30 at 01195-01197. A detailed and voluminous report was prepared for CORP. Exhibit 30 at 01194-02370. As shown by CORP's statements in the Partnership proposal from November 14, 2007, these "phase 1" bridge repairs will cost \$6.75 million. Moreover, if the Board carefully reviews the documents in Volumes III and IV, the deteriorated condition of the Line will be apparent. The Board will also see that CORP had in its possession extensive bridge and tunnel reports dating back to 2004 and 2005 that pointed out the poor and unsafe condition of the Line, yet CORP did not make the repairs necessary to keep the Line open while also omitting the statutory SDM designation, which would have informed shippers and communities that the Line was in jeopardy.

*The need for track and tie repairs was described in an FRA track inspection report from November 2007. Exhibit 30 at 02371-02438.*



**C. The Board should increase the amount to be placed in escrow as necessary based on the Line's condition when the transfer of ownership occurs**

Information received from CORP in discovery reveals that CORP has taken no steps to either repair the deterioration that allegedly caused the embargo or to even maintain the embargoed section of the Line in any way, other than the removal of fallen trees and the erection of gates in the tunnel portals. Exhibit 11 (CORP's response to Interrogatory #21). CORP completed bridge repair work on the Line in the summer of 2005 and the summer of 2006. Exhibit 30 at 03643-03660. However, an extensive bridge inspection in January and February 2007 (which resulted in repair recommendations due to "unsafe" conditions) apparently did not lead to a similar program in the summer of 2007. Exhibit 30 at 01194-02363. CORP's continuing failure to make any effort to return the Line to service reveals that the embargo, which was unlawful when issued in September 2007 (Port Show Cause Reply at 9-18 and 22-43), remains unlawful. Moreover, CORP's continuing neglect of the Line implicates the doctrines of *Railroad Ventures*, Docket AB-556 (Sub-No. 2x), and *Kansas City Southern*, Docket AB-103 (Sub-No. 21X). See pages 19-27 of the Port's Comments in AB-515 (Sub-No. 2).

CORP's failure to make any effort to maintain the embargoed portion of the Line during the embargo means that the Board should increase the escrow fund as needed to account for further deterioration of the Line until the date that the Port takes ownership of the Line. *Kansas City Southern*, Docket AB-103 (Sub-No. 21X), slip op. at 4-5 (served May 20, 2008) (Board finds that railroad has duty to maintain rail line subject to OFA process in substantially the same condition it was when abandonment application was filed); *Railroad Ventures*, Docket AB-556 (Sub-No. 2X), slip op. at 7-8 (served April 28, 2008) (Board finds railroad responsible for deterioration of line because, in part, railroad "did nothing to maintain the line" during the OFA

process) CORP has already admitted that, beginning with the embargo, regular maintenance on the Line has ceased. Exhibit 11, response to Interrogatory #21. See also CSSC Comments at 10. Evidence from the Show Cause Proceeding, Docket 35130, reveals that noticeable deterioration of the tunnels took place even in the first month of the embargo. CORP Show Cause Response (filed May 12, 2008), Exhibit 8 at page 1 (FRA notes that, as of October 9, 2007, tunnels have deteriorated beyond that described in Shannon & Wilson's July 2007 report)

Not only are the bridges, tunnels, rails, and other assets of the Line continuing to deteriorate during the embargo, feeder line, and abandonment cases, but anecdotal evidence from local media in the Coos Bay area indicates thefts of the rail assets have occurred. Application, Exhibits 8 and 9. The Board should allow for revision of the escrow fund to account for funds the Port will have to expend to replace tracks and other assets that have disappeared during the embargo.

**VI. CONCLUSION**

The Port appreciates the Board's efforts over the last year, particularly in focusing so much attention on the fate of rail service in the southwestern Oregon region. This is a critical moment for the Port and the region. The Board should order the sale of the Line to the Port at the value set forth in this Reply, with \$12.699 million of the purchase price placed in an escrow account so that rehabilitation of the Line can occur and service to the entire Line can be restored.

Respectfully submitted,



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*Port of Coos Bay*

**CERTIFICATE OF SERVICE**

This is to certify that on this 12th day of September 2008, I caused the foregoing Reply regarding the Feeder Line Application in STB Finance Docket No. 35160 to be served upon all parties of record in this proceeding. The Highly Confidential Version or Confidential Version, as the case may be, was served on eligible parties who have executed the appropriate Undertaking pursuant to the Protective Order in this proceeding. All other parties received a Public Version.

  
David E. Benz

**1**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

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**REPLY VERIFIED STATEMENT OF GENE A. DAVIS, P.E.**

**Exhibit 1**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

**STB FINANCE DOCKET NO. 35160**

**OREGON INTERNATIONAL PORT OF COOS BAY  
– FEEDER LINE APPLICATION –  
LINE OF CENTRAL OREGON & PACIFIC RAILROAD  
BETWEEN DANEBO AND CORDES, OR**

**REPLY VERIFIED STATEMENT  
OF  
GENE A. DAVIS, P.E.**

**EXHIBIT 1**

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A	Summary of Rail Evaluated (Revised As of August 15, 2008)
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C	Gross Liquidation Value of Track Assets (Revised As of August 15, 2008)
D	Yard Tracks and Sidings Summary (Revised As of August 15, 2008)

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC

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STB FINANCE DOCKET NO. 35160

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OREGON INTERNATIONAL PORT OF COOS BAY  
– FEEDER LINE APPLICATION –  
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REPLY VERIFIED STATEMENT  
OF  
GENE A. DAVIS, P.E.

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EXHIBIT 1

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
– FEEDER LINE APPLICATION –  
LINE OF CENTRAL OREGON & PACIFIC RAILROAD  
BETWEEN DANEBO AND CORDES, OR**

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**Introduction**

The Oregon International Port of Coos Bay (Port) requested R.L. Banks & Associates, Inc. (RLBA) to further refine its initial Net Liquidation Value (NLV) of track assets submitted to the Surface Transportation Board (STB) as part of its Feeder Line Application (STB Finance Docket NO. 35160) concerning a rail line owned by the Central Oregon & Pacific Railroad (CORP) over which rail service previously had been provided between Danebo and Cordes, Oregon but has since been embargoed west of Vaughn. Again, the subject rail line valuation encompasses existing track, ties, ballast, switches and other track materials (OTM) between milepost (MP) 652.11 and 763.13.

The initial NLV estimate of the subject track assets, excluding land and rolling stock, as of April 18, 2008 (the date of my initial inspection) was determined to approximate \$8,901,100, as detailed in my June 27, 2008 Verified Statement (V.S.). My initial estimate was determined without enjoying access to much of the rail line, requiring the viewing of the track structure from publicly available locations such as at-grade, highway-rail crossings and with the benefit of an aerial inspection (to determine potentially missing track structure). Prior to performing my initial valuation, I contacted CORP on March 19, 2008 (identifying myself as a contractor working on behalf of the Port, requesting to conduct a condition assessment of the subject line) and seeking access on the line, which request was denied on March 20, 2008. After the Port's filing of the Feeder Line Application, STB compelled CORP to allow an on-site inspection and thus participated in a hyrail inspection trip on August 13 through 15, 2008. The hyrail trip participants included:

- Leo (Slim) Mattox, CORP General Roadmaster;
- Troy Milbrett, CORP Maintenance of Way (MOW) Foreman;
- Jeffrey Bishop, Port Executive Director (one day);
- Martin Callery, Port Director of Communications and Freight Mobility and
- Gene Davis, RLBA Director, Transportation Engineering.

Areas inspected of the subject line were viewed on:

- August 13, 2008 between Danebo and Florence
- August 14, 2008 between Florence and Lakeside and
- August 15, 2008 between Lakeside and Cordes (with follow-up visits to the Kroll, Gardiner Junction and Reedsport areas).

Although the on-site hyrail inspection trip was able to cover significantly more of the subject rail line than I was able to view during my initial inspection, there remain locations at which I was not able to assess the condition of the railroad or its composite asset components because of downed trees or slide areas covering the track and the tunnels that were the catalyst of the embargo. When unable to view those areas, we drove around to areas where public or private roads were nearby and I walked to the desired location to perform my field verification at approximately five mile intervals. My conclusions are set forth in this Reply V.S. which is attached to the *Port's Reply* being filed in this proceeding. In this V.S., I present the assumptions and other calculations underlying my revised conclusions.

Some assertions concerning my initial NLV estimate set forth in my June 27, 2008 V.S. of the Port's Feeder Line Application were made by CORP's representatives and its witnesses in the *Response Of Central Oregon & Pacific Railroad, Inc. To Feeder Line Application*, which assertions warrant correction and clarification. I will first deal with the NLV recalculation (made after finally being allowed on the property by CORP) and then, in turn, deal with each of the supposed six different areas where CORP asserts that my initial NLV was flawed.

## **Revised Description of the Railroad**

CORP furnished an inventory of its railroad assets between MP 669.0 and 763.13 in its *Application Of Central Oregon & Pacific Railroad, Inc. For Authority To Abandon Railroad*

*Lines and Discontinue Rail Service* dated July 14, 2008<sup>1</sup> as well as a similar inventory between MP 652.11 and 669.0 and a Coos Bay Branch track chart (last updated February 21, 2001) as part of its *Response to Discovery Request* by the Port, which was the subject of my field verification during the hrrail inspection trip.

After recognizing that disconnect, I decided to use the track chart as the base on which to do the field verification. I verified information contained within the track chart at approximately five-mile intervals and found that of the twenty-one locations checked; only four had revisions that needed to be made concerning rail replacement. A complete inventory of rail on the subject line (including corrections found) can be found at Attachment A. The "Notes" area at the end of Attachment A is a description of the rail section, dates and weights actually found in the field.

I again created the rail inventory seen in Attachment A of this V.S. The amount of main track rail mileage remained constant at 111.02 miles while the side track mileage decreased from the initial estimate of 8.85 miles to 5.65 miles, accurately reflecting the mileage in the field.

The 116.67 miles of mainline, side and industry track varies in rail size throughout the entire corridor (as reflected in the CORP-furnished track chart) including 136, 132, 131, 130, 115, 113, 112, 110, 90 and 85 pound regular jointed and continuously welded rail (CWR). As I first believed and indicated in my June 27, 2008 V.S., much of the rail is quite old, showing signs of significant wear (both curve and head) and some even has

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<sup>1</sup> Bader V S Attachment 1 – Public Version

<sup>2</sup>

been transposed (or re-laid on the opposite side in order to move the previously unused rail surface to the inside, load-bearing position)

Attachment A illustrates that of the seventeen inspection locations where rail had not been changed, sixteen of the manufacture dates are prior to 1956, with the vast majority being rolled in the 1930's and 1940's. As was correctly pointed out at page seven in the V.S.,

Page 1 of the Photo Log illustrates some experienced wear patterns on the line.

The valuation set forth in this Reply V.S. reflects the information gained through the more thorough physical inspection and information provided through printed sources. The evaluation covers rail, ties, ballast, switches and OTM including joint bars, anchors, tie plates and spikes. A summary of the assets evaluated appears in the respective Attachments to this Verified Statement.

### **Revised Net Liquidation Value**

Much of the debate in this proceeding centers on the actual date of the valuation and is the subject of the false allegations by CORP Witness Pettigrew in his V.S.<sup>3</sup> that I utilized "historical" prices in my June 27, 2008 V.S. My June 27, 2008 V.S. valuation date reflected the actual date that I inspected the property (though in a limited capacity) which is quite common in the industry, thus providing a snap-shot of the NLV on that date. After finally gaining access to the subject line, the NLV estimates that are the subject of this V.S. reflect the percentages of relay rail actually found in the field, August 15, 2007.

Because this process started with the embargo of the line on September 21, 2007, the Port and its representatives instructed me to calculate the NLV that would have been commensurate with the date of the embargo, given the currently observed rail conditions.

A key assumption is that no rail traffic has traversed over the line during the period from September 21, 2007 to the present date, which I believe is accurate. To calculate the prior NLV estimate, I utilized the appropriate American Metal Market (AMM) prices

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<sup>3</sup> Pettigrew V.S. p 3, pages 12-15

associated with reroller, scrap rail and OTM on September 21, 2007. To estimate relay prices believed appropriate to that time frame, I utilized then current market prices, dated December 1, 2007, obtained from L.B. Foster on another NLV project which most likely would provide slightly higher prices than those available on September 21, 2007. Where a different rail weight contained within the Danebo - Cordes corridor was not included in the L.B. Foster prices, I estimated the price differences based on my understanding of the market prices at that time. As was correctly indicated in the *CORP Response to Feeder Line Application*, scrap steel markets have changed dramatically during the time frame from the September 21, 2007 date of the embargo to the August 29, 2008 date of the *Feeder Line Reply* by CORP, as portrayed in Figure 1 on the next page.

Lastly, the Port and its counsel have instructed me to calculate an NLV dated September 24, 2004 (representing the date of the Milbor Pita tunnel report) using the respective AMM (Chicago) prices of reroller, scrap rail and OTM. To obtain relevant relay prices appropriate to the Danebo - Cordes corridor, I utilized prices submitted by a RailAmerica subsidiary at the time and when rail weights were different, I estimated those differences. I understand that although the prices submitted in the 2004 case were not allowed, they likely would reflect RailAmerica's desire to achieve market prices.

As summarized in Table 1 at the top of the third following page and detailed in Attachment B, the revised aggregate, track-related NLV of all selected CORP-owned property, (116.67 miles of railroad main, side and industry track) was:

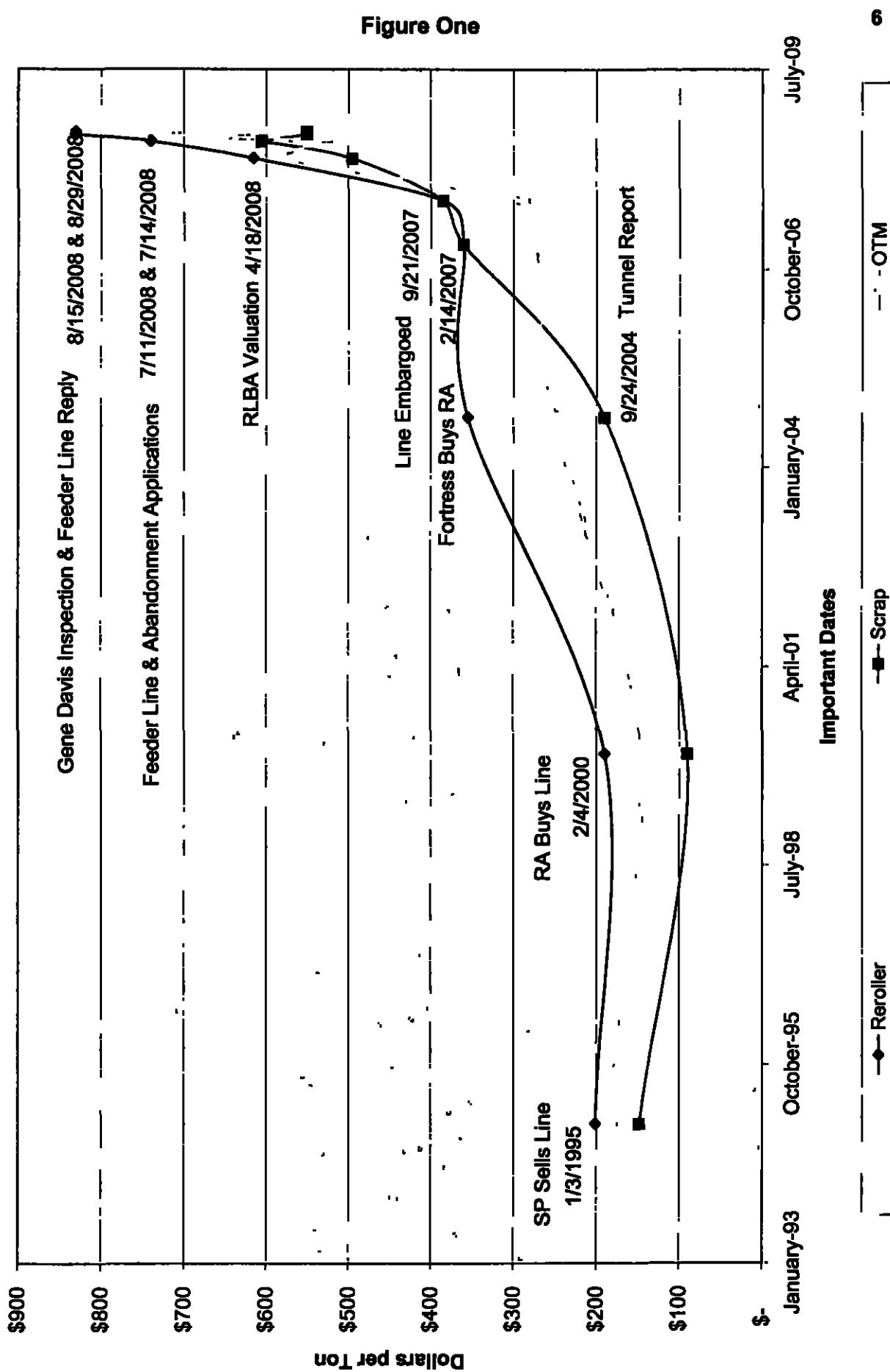
- \$13,323,031 as of August 15, 2008 (date of my latest physical inspection);
- \$ 9,758,692 as of September 21, 2007 (date of the embargo) and
- \$ 5,651,939 as of September 24, 2004 (date of Milbor Pita tunnel report).

Those figures were determined after application of market prices to the inventory as well as application of typical removal costs developed through my thorough, three day physical inspection of the property on August 13 through 15, 2008, as well as additional information obtained from CORP-provided track charts and bridge inspection reports.

I inventoried the mainline to be comprised of 111.02 track miles of heavy and medium weight (136, 132, 131, 130, 115, 113, 112 and 110 pounds) regular jointed and CWR. It

## Scrap Prices

### Figure One



should be noted that the CORP-provided track chart designates some locations as CWR, but in actuality field verification proved the assets to be a combination of two 39-foot sticks of regular jointed rail welded together with more of the same coupled together, which is an inferior version of true CWR. Side and industry track mileage was estimated at 5.65 miles of medium and light weight (113 (Head Free or HF), 112, 90 and 85 pounds) regular jointed rail. A detailed breakdown of total mileage by rail weight is shown in Attachment A.

## **Determination of Net Liquidation Value**

I utilized fundamentally the same NLV estimation process as that in my initial June 27, 2008 V.S., which has been accepted by this Board in similar proceedings including this year<sup>4</sup> as being thorough and accurate, wholly supported by my successful railroad client, Kansas City Southern. Though that particular valuation was much smaller in scale, I have used the same process (which has been accepted by the Board) in eighteen NLV assignments since joining RLBA six years ago on behalf of clients including seven railroads (sellers, one of which was a repeat customer), one freight customer as well as numerous state and public entities seeking to acquire railroad corridors. In this instance, I adopted some of Unitrac's approaches to estimating material loading and handling costs as will be detailed later.

The total estimated NLV of all CORP track assets in the evaluated area (excluding land and rolling stock) on the respective dates of interest are illustrated in Table 1 on the next page.

Again, as presented in my June 27, 2008 V.S., I determined the NLV through four principal steps: first, computation of Gross Liquidation Value (GLV), the market value of salvageable assets (primary components with a value greater than related liquidation expenses); second, calculation of various liquidation expenses; third, determination of Preliminary Track Liquidation Value, that value remaining after deductions of Liquidation Expenses due to removal and restoration as necessary to render assets saleable and preparation of the corridor for non-rail use and fourth, calculation of Net Liquidation Value (NLV), that value remaining after deductions of Administrative and Marketing Expenses as well as conduct of the sales process such as materials Transportation Expense.

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<sup>4</sup> Abandonment Petition For Exemption, STB Docket No. Ab-103 (Sub-No. 21x).

Table 1

**NLV of Certain Track Assets  
CORP-Owned Rail Line  
(dollars in thousands)**

Values	August 15, 2008	September 21, 2007	September 24, 2004
Gross Liquidation	\$27,835,100	\$16,547,200	\$11,712,400
Less Liquidation Expenses			
Preparation Cost Adjustments	1,443,800	1,443,800	1,443,800
Restoration Cost Adjustments	171,100	171,100	171,100
Preliminary Track Liquidation	\$26,220,200	\$14,932,300	\$10,097,500
Administration, Marketing and Transportation Expenses	6,902,169	5,173,608	4,445,561
Net Liquidation Value	\$13,323,031	\$9,758,692	\$5,651,939
Bridge Removal Expense	\$5,995,000		

Source Attachment B.

## Methodology To Compute NLV

The major difference between this valuation effort and my initial estimation was my ability to access more fully the subject line to conduct a thorough field inspection. CORP is critical of me in the Response to Feeder Line Application because I did not base my estimate "upon a thorough physical inspection" (page 29) but as indicated above, I applied to CORP for permission to enter the property in March 2008 and was refused. The rail inventory seen in Attachment A is the result of that inspection. Attachments A, B, C, D, E, F, G, H, I, J and K to this report provide detailed computational data, including inventory, condition assessment, unit volumes and costs by type of asset valued. While following the same process as in my June 27, 2008 NLV estimate, I will not reiterate the areas where the two statements are the same or unchanged, but will focus on the four most significant changes and/or topics:

- Steel;
- Ties;
- Tunnels and
- Bridge Removal Costs.

**Steel.** All 116.67 miles of main and side track rail was constructed with 85, 90, 110, 112, 113, 115, 130, 131, 132 or 136 pounds per yard weight to American Railway Engineering



Association (AREA) and American Society of Civil Engineers (ASCE) specifications. (See Attachment A to view manufacture dates and locations of each rail type.) The following grading was based upon RLBA estimates and information I gathered during my field inspection. Sidings and the CORP-owned portion of industry tracks were found to be constructed of 85, 90, 112 and 113 HF pound rail. Rail classifications are detailed in Attachments C and G. Attachments D and E provide data concerning yard track and siding rail and turnout inventories, respectively.

I adjusted the initial NLV estimate to accurately reflect the turnouts found in the field. Of the main and industry track turnouts on the subject CORP-owned lines, were classified as relay quality since they were of 112 or greater pounds per yard rail and components. The exception is the turnouts composed of 113 HF pound rail and components which were classified as scrap due to the less desirable rail section.

For a complete list of turnout information, please refer to Attachment E.

As in my June 27, 2008, all double shoulder tie plates used on 136, 132, 131, 130, 115, 113, 112 and 110 pound rail were classified as relay, even if the rail they supported was classified as scrap because they can still be sold in the relay market. Joint bars and rail anchors were assumed to be sold as scrap if the rail it was on was classified as scrap while if on relay quality rail, the joint bars and rail anchors are assumed as relay. CWR was found to contain about fifty percent of the number of joint bars as regular jointed rail because CORP classifies CWR on its track chart when in actuality, two 39-foot sections of regular jointed rail are welded together in nearly all cases and then joined in a series. All other track material (OTM) such as nuts, bolts, washers and spikes were valued as scrap just as in my initial NLV estimate.

Ties. RLBA sampled blocks of 100 ties at twenty-one locations (spaced approximately every five miles) throughout the valuation limits to determine tie condition as seen in Attachment F of this V.S and summarized in Table 2 on the next page, illustrating how my initial estimate was modified to reflect the actual field conditions found as an input into the NLV determination. Photo Log, Page 2 provides some illustrations of poor tie conditions.

I determined that of each 100 ties sampled, on average, would be of relay quality, would be classified as landscape and would be classified as scrap.

**Table 2**  
**Summary of Tie Conditions**  
**Two Inspections of CORP-Owned Rail Line**

Grade	April 18, 2008	August 15, 2008
Relay		
Landscape		
Scrap		

Source: RLBA

**Permanent Tunnel Closure.** Another expense area in the case of the Coos Bay Line is that associated with securing or sealing the tunnels, which is believed necessary due to the danger and liability issues associated with unsealed, abandoned and decaying railroad tunnels were the line to be abandoned. None of CORP NLV estimates reflected permanent tunnel closures which I feel is absolutely necessary to limit liability exposure as a result of trespassing. Different methods of closure exist; however for purposes of this valuation, RLBA estimated that all tunnel openings would have a sufficient amount of rock and small stone dumped in each portal to prevent any access. I saw during my field inspection that the gates installed by CORP at the tunnel portals (Photo Log, Page 3) would not be able to prevent trespassing over the long term. Similar to the conclusions I expressed in my June 27, 2008 V.S., I estimated that tunnel remediation would require about \$10,000 per tunnel to fill both portals with rock and stone sufficient to seal the ends.

**Bridge Removal Costs.** As set forth in my June 27, 2008 V.S., traditionally, no net liquidation value is assigned to bridges, or culverts on any line in the calculation of an NLV by RLBA and its experts. On some occasions, bridge and culvert removal costs and proceeds approximate each other and therefore have no net effect on an NLV and so are typically omitted from NLV calculations. In other cases, bridges are left in place to facilitate future trail use as is decided on a state-by-state basis in each case. However, in this case of the CORP Coos Bay Line, the net cost of removing the two swing span bridges is included in the NLV calculation due to my understanding and interpretation of available correspondence<sup>5</sup> that at an absolute minimum the spans over the navigable waterways likely will be required by the Coast Guard to be removed. In addition, other

<sup>5</sup> Davis V.S. Attachment 6, June 27, 2008 and Pettigrew V.S. Attachment 9

agencies such as but not limited to the Army Corp of Engineers and/or Oregon DOT are likely to require that portions of the bridges over roads and wetlands be removed as well. For the purposes of bridge removal's effect on NLV estimations, only the bridges over the Siuslaw River (MP 716.4 near Cushman) and the Umpqua River (MP 739.63 near Gardiner Junction) are assumed to require removal. Strictly from a common sense point of view, removing only the trusses over the navigable waterways and allowing the approach portions of the bridges to remain intact would invite trespassers into hazardous situations (Photo Log, Page 3) and provide an obstacle for drift and debris to accumulate against during and after heavy rainfall. The resulting on-going maintenance responsibility would have to be borne by someone. I personally have had to remove drift from bridge locations that were left in place on an abandoned line in West Virginia on average once or twice per year while working with Norfolk Southern as a Assistant Division Engineer – Bridges.

In my June 27, 2008 V.S. Attachment Six, Coast Guard representative Mr. Austin Pratt, Chief, Bridge Section (dpw) stated that the Coast Guard verified that it has authority to force a railroad seller to remove or alter bridges in such a manner as to not affect maritime traffic. Those assertions, along with the e-mail sent to CORP from Alesia Steinberger,<sup>6</sup> leads me to believe that the cost of removing the entire bridge structure, including that contained within the flood plain, should be estimated in connection with the respective rivers.

Had I originally been provided with similar information provided to CORP's witnesses, I could have estimated volumes of bridge materials contained within the Suislaw and Umpqua bridges. Utilizing the CORP-provided bridge information, I recalculated the bridge material volumes contained within the swing span bridge over the Suislaw River.

According to CORP-provided documents, the Suislaw River bridge is about                      feet long<sup>7</sup> and consists of:

- a single span through plate girder (TPG) –                      long;
- nine spans of open deck timber trestle (ODPT) –                      long;
- four spans of through truss (TT) – the swing span is counted as two –  
long and
- spans of ODPT –                      feet long.

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<sup>6</sup> Pettigrew V.S. Attachment 9

<sup>7</sup> CORP Response to Discovery, p. CORP002441

Similarly, the bridge over the Umpqua River totals        feet long<sup>8</sup> consisting of:

- Four spans of ODPT – 80 feet long;
- spans of TT – the swing span counted as two –        feet long and
- Four spans of ODPT – 80 feet long.

Steel spans are supported by concrete piers<sup>9</sup> and are estimated to be removed down to two feet below the bottom of the stream bed (mudline). CORP's estimates reflect utilizing *turbidity curtains instead of cofferdams during pier removal which I believe is overly optimistic and grossly underestimates the bridge removal costs.* Dana Siegfried is currently working on another project in a similar area and strongly believes that were the *line to physically be abandoned, certain agencies likely would require use of cofferdams,* which are reflected in the revised Staton Companies estimate, dated September 8, 2008, as seen in Attachment L.

Another area of difference focused on the necessary permitting that would be required were the line to be liquidated therefore the Port requested a refinement of its initial permitting estimate which is contained in Dana Siegfried V.S. Attachment B. I utilized her permitting estimate as she is intimately familiar with both construction in the local area as well as the necessary permits required to perform that construction. In the event of a physical line abandonment, Attachments J and K illustrate the steps CORP or its bridge demolition firm would be required to undertake with some steps likely performed simultaneously:

- necessary permits;
- mobilize a workforce (or contractor) qualified in bridge work/removal;
- design, procure and construct a cofferdam system (believed to be required);
- remove rail from the bridge deck (could be accomplished as part of a much larger rail removal project;
- perform lead abatement (Photo Log, Page 4);
- remove steel spans by use of a crane lifting the span off its supports (if small enough) or by floating out truss spans over the river;
- remove timber spans;
- demolish the steel spans and transport them to market;

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<sup>8</sup> Ibid, p CORP002442

<sup>9</sup> Maloney V.S. page 11 and 15.

- construct cofferdams around the piers by driving sheet piles around a support system usually with a crane mounted on a barge;
- dewater the cofferdams;
- remove concrete or stone piers down to the stream bed, again using a crane mounted on a barge;
- remove the sheet pile, allowing the cofferdam to fill with water;
- remove the cofferdam support system around former pier locations;
- remove timber bents with a hydraulic saw (if underwater) or regular chainsaw (if on dry ground) at or below the ground line;
- remove and transport timber members and
- demobilize the workforce.

Similar to the items I expressed in my June 27, 2008 V.S., in order to achieve the highest value of scrap steel from the bridge removal, I estimated that the scrap would be shipped to Chicago in 100-ton rail cars, as illustrated in Attachments J and K. I again utilized the same per car shipment charges as reflected in my earlier V.S., though car shipments via UP may have fluctuated since the initial estimate<sup>10</sup>.

This bridge removal procedure is the same as I put forth in my June 27, 2008 V.S. and I still believe that given, the environmental sensitivity manifest in concerns of the local area, Attachments J and K accurately represent the costs that would be associated with removal of both the Suislaw and Umpqua River railroad bridges. Where the material quantities were correct, I utilized the same volumes as Mr. Maloney or corrected them where the volumes differed from information provided by CORP and applied the volumes to the unit costs specific to each bridge. It should be noted further that the Port solicited and received a second, separate bridge removal bid from West Coast Contractors, based in Coos Bay, OR, seen in Attachment M, which estimates removal of the Suislaw River bridge at \$2,654,180 and \$5,465,800 to remove the Umpqua River bridge or a total of \$8,119,980 to remove both. I believe what this illustrates is that certain unknowns currently exist and that the bridge removal estimates set forth by CORP are overly optimistic and under priced.

Timber components are assumed to not be able to be resold and therefore must be disposed of appropriately and, as such, only act as a reduction from other proceeds generated during the bridge removal process. Some of the better piles possibly could be

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<sup>10</sup> UP website ([www.up.com](http://www.up.com)).

used to act as replacement posts in other bents, however a new complete bridge inspection should be performed before any reuse would be considered.

Utilizing all available information, including the adjusted September 8, 2008 Staton Companies' bridge removal estimate, I estimate that a negative net effect of \$2,894,600 would result from the removal of the Siuslaw River Bridge and \$3,100,400 for the removal of the Umpqua River Bridge or a total of \$5,995,000.

Notwithstanding page after page of rhetorical attacks by CORP's witnesses on the methodologies I employed and the preliminary results I reached in my previous Verified Statement addressing the net liquidated value of the rail assets in CORP's Coos Bay Line between Danebo and Cordes, the fact of the matter is that my results closely resemble those advanced by CORP in all areas except two, as explained below.

Specifically, Table 3, on the next page, summarizes key subtotals from Attachment B to my Reply Verified Statement. With respect to both the revised net liquidation value advanced in this Reply Verified Statement and that advanced by Unitrac, the bidder that CORP said it would rely upon as dispositive of the net liquidation value of the subject property, all else equal, both the table and attachment show subtotals with respect to:

- Gross Liquidation Value;
- Preparation Cost Adjustments (subtractions);
- Preliminary Track Liquidation Value, Excluding Bridge Removal;
- Transportation Expense and
- Administrative and Marketing Expense.

A perusal of the first two columns of numbers in the table or attachment and, indeed the differences between values in the respective columns, which are reflected in the far right column of the table below demonstrate that the differences between the parties are relatively minor down through the fourth subtotal, Transportation Expense. In fact, the addition of the third and fourth subtotals sum to \$ 00 in my opinion versus \$ based on what filed on behalf of CORP, a difference of much less than one, one-hundredth of a percent.

Table 3

NLV of Certain Track Assets  
CORP-Owned Rail Line

Components	Unitrac Bid	Reply VS of Gene Davis	Difference Versus Reply VS
Gross Liquidation Value		\$ 27,995,800	
Preparation Cost Adjustments		(\$ 1,443,800)	
Preliminary Track Liquidation Value, Excluding Bridge Removal		\$ 26,552,000	
Transportation Expense		(\$ 2,326,700)	
Subtotal of Above Two Rows		\$ 24,225,300	
Administrative and Marketing Expense		(\$ 2,322,300)	

Source: Table 1.

There is, however, a substantial difference between the parties with respect to Administrative and Marketing Expense. My estimate of that valuation component subtotal is (\$ ) whereas the equivalent values attributed to that component by subtotals to \$ ). Having compared all of the numbers at issue, I have reached the conclusion that the differences in that valuation component are due to the fact that the breadth and amount of elements captured in s estimate are consistent with but greater than those captured in costs I have labeled "Administrative and Marketing Expense." At page thirteen of my Verified Statement, which was advanced as page 107 in Exhibit 6 to the Port's Feeder Line Application, under the heading Marketing, Administrative and Transportation Expenses, I stated that

"[B]ased upon RLBA's experience, I have determined that the cost to administer the liquidation of the tracks and OTM and to market the assets so as to achieve retail prices is approximately fifteen percent of retail GLV (excluding transportation) regarding relay steel materials and five percent of GLV re scrap, reroller and non-steel materials.

To be consistent and above reproach, I have used those two percentages in all of the seventeen, similar rail asset net liquidation valuations of railroad assets which I have completed on behalf of a range of RLBA clients, some of whom would benefit from the highest possible valuation and some of whom would benefit from the lowest possible one, including a competitor of

I have reviewed the materials that constitute the \_\_\_\_\_ bid and have found that there are four elements on \_\_\_\_\_'s bid sheets which equate to the elements which I have characterized as Administrative and Marketing Expense. Those elements are: 1) " \_\_\_\_\_ ;" 2) " \_\_\_\_\_ ;" 3) " \_\_\_\_\_ " and 4) " \_\_\_\_\_ ."

\_\_\_\_\_ are driven by tons of material and pieces of rail. Since they are related to physical quantities, they do not vary from one date to another and are a constant amount.

\_\_\_\_\_ element consists of a varying amount of profit on each different track component. RLBA calculated the percentage of Total GP (gross profit) divided by Total Sales and applied it to each scenario to calculate profit in parallel with the \_\_\_\_\_ approach.

\_\_\_\_\_ is a calculation made by \_\_\_\_\_ which represents percent of the total funds required to purchase and scrap the line. This amount varies as the price of rail changes so it is different in each scenario. RLBA has reproduced this calculation in each scenario to develop a cost of funds using the \_\_\_\_\_ approach.

\_\_\_\_\_ is the total of lump sum amounts attributed to the two segments valued by \_\_\_\_\_. It does not vary among scenarios.

Notwithstanding that strict adherence to the same methodologies throughout those assignments, I recognize that the two percentages I have adopted and applied consistently across my other seventeen valuation assignments are estimates that may be more or less than what the market would bear with respect to any particular situation. Further, I cannot find anything wrong with respect to the elements in \_\_\_\_\_'s bid. Therefore, I have decided to adopt the \_\_\_\_\_ elements that correspond to my Administrative and Marketing Expense.

With respect to the segment between Danebo and Vaughn, those items can be found on page eight to Attachment 1 – Confidential of \_\_\_\_\_'s Bid Sheet. From left to right, the first item, \_\_\_\_\_, is labeled three-fourths of the way down the first column and totals \$ \_\_\_\_\_ below and to the right of the label. The second item, \_\_\_\_\_, is the last dollar amount in the third column from the right at the top half of the page and totals \$ \_\_\_\_\_. The third item, \_\_\_\_\_, is four numbers up from the bottom



right corner of the page and totals \$ . The fourth item, , is three numbers up from the bottom right corner of the page and totals \$ . The sum of those four items is \$

With respect to the segment between Vaughn and Cordes, those items can be found on page nine to Attachment 1 – Confidential of 's Bid Sheet. Located in exactly the same places as identified with respect to the previous page, the corresponding numbers are \$ , \$ , \$ and \$ , totaling \$ . Adding that figure to the \$ that was the total of the numbers in the last paragraph yields a grand total of \$ .

### **Incorrect CORP Assertions**

In its Response Of Central Oregon & Pacific Railroad, Inc. To Feeder Line Application, CORP makes several assertions as to why it feels that my initial NLV estimate was flawed. While some of its statements are partially accurate, they do NOT reflect the whole truth. I will deal with each assertion in order as they appear in the Alan Pettigrew V.S. (Pettigrew V.S. pages 2-3)

*First, the Port's NLV estimate is based on assumptions and estimates by a consultant who lacks real world experience in the supply, salvaging, and sale of track assets, while CORP's valuation is based on actual offers from experienced rail salvage and supply companies.*

While Witness Pettigrew's assertions are true on their face, they are irrelevant. The process I have employed at least seventeen times at my current employer is grounded in two, "real world" elements, condition assessment and market prices. The condition assessments that I perform are based on my more than two decades in railroad infrastructure management and consulting employment, including eighteen years at Norfolk Southern, the carrier generally acknowledge to have the best maintained infrastructure in the industry while the prices I employ are drawn directly from both salvaging companies and pricing services designed to serve them. The fact that I have worked on behalf of clients all across the railroad industry perspective, from those who have an interest in obtaining the highest possible valuations to those who have an interest in obtaining the lowest possible valuations, speaks to my integrity and the unassailable process I follow. Furthermore, the fact that I have done net liquidation valuation work on behalf of more than a half dozen railroads, including a Class One carrier, and a salvaging

company speaks to the integrity and accuracy of my process and results.

*Second, perhaps as the result of its consultant's lack of relevant real world experience, the Port's estimate misclassifies a substantial portion of the rail and other track material ("OTM") found on the line, in part because of the remarkable assumption that none of the rail on the entire line is of relay quality.*

In its *Response To Feeder Line Application* by CORP, CORP and its witnesses made comments about my not including any relay rail in my June 27, 2008 V.S. As specifically pointed out in both my initial statement and this statement, this exclusion was simply and solely because CORP would not allow a detailed inspection before being forced to by the STB. To estimate the EXPECTED volume of relay rail without having gone over the subject line would have been improper. Likewise, had I made any assumption about the percentage of relay quality rail other than zero, I could have either significantly over or underestimated the NLV associated with track assets that might not have been present. Once allowed to inspect the subject line, I found (just as I expected) some relay quality rail, though not in the volumes as set forth by L.B. Foster and Unitrac. In my professional opinion, Attachment G correctly illustrates the total volumes (by percentages) of relay, reroller and scrap rail found during my August 13-15, 2008 inspection respective to rail weight and section. I agree with each and disagree with elements of each salvage company estimate, as they do not totally agree with each other.

As pointed out earlier in this V.S., had CORP been forthcoming in allowing me to access the line before my initial June 27, 2008 V.S., I would have found the same conditions that I present in this V.S. in that certain rail sections do contain relay quality rail. Clearly, as Attachment G illustrates, I classified 136 RE pound (jointed and CWR), 132 RE pound (jointed and CWR), 115 RE pound (CWR) and 112 RE pound (jointed and CWR) as all warranting classification as relay quality rail. Additionally, I would have known that the track asset inventory provided to all parties by CORP (including L.B. Foster and Unitrac) demonstrated a disconnect between the amount of rail volumes in the field and the inventory itself if I had been allowed on the line in April as I had requested.

Having full access to the field observations allows all interested parties to make accurate estimates. For example, I call attention to the

This is not accurate as verified by Attachment A of this V.S. beginning on page one

**PUBLIC VERSION**

through to the end of that Attachment. I personally field checked seventeen locations between those milepost limits and found that ten of those locations contained

leading me to believe that this was simply a typographical error and hopefully not a misrepresentation on the part of CORP. This error, however inaccurately increases the total tonnage of relay rail attributed to the corridor by                    tons<sup>11</sup>.

This simple typographical error alone results in an overstatement approaching \$196,152 of the NLV estimate by L.B. Foster.

#### *Unitrac*

I was pleased to see Witness John Wilhoit say that he thought my "overall method and analytical structure ... was generally sound."<sup>12</sup> I was however disappointed that he did not recognize that I had not been given the opportunity (as he had) to make a thorough inspection of the line BEFORE having calculate an NLV estimate. Mr. Wilhoit falsely accuses me of utilizing "outdated" prices in my calculations. While this is technically true, it is also incorrect. The AMM prices I employed directly coincides with the date of my limited physical inspection which Mr. Wilhoit fails to acknowledge. Most NLV estimates will provide a "snap-shot" estimate in time because as has been accurately pointed out in this proceeding, steel prices fluctuate over time.

Without having the opportunity to inspect the line properly, I don't understand how Mr. Wilhoit can say that I should have been able to know all the tie plate sizes on the line.

Mr. Wilhoit further insinuates that I under-utilized the rail cars estimated to ship rail. Had he taken the time to look thoroughly at the calculations, he would have noticed that I did max out the utilization of every car to 100 tons in my June 27, 2008 V.S.

Lastly, Mr. Wilhoit assumes that I automatically assumed that every car of rail would be shipped to Chicago. Not knowing where a potential buyer might be located, I estimated what I thought (and still think) is a happy medium. When shipping relay materials short of

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<sup>11</sup> Pettigrew V.S. Attachment 5

<sup>12</sup> Pettigrew V S Attachment 1, page 2.

Chicago, transportation costs would be somewhat less than what I estimated and the reverse could also be true in that if the customer is farther away than Chicago, shipping costs likely would have been more.

*L.B. Foster*

As CORP Witness Rick Steininger correctly points out,<sup>13</sup> the absolute best method and only sure method to accurately determine an NLV estimate is a "complete walking inspection of the line." Falling well short of that is the inspection that CORP allowed Port representatives to accomplish on August 13-15, 2008 via a hyrail and spot checking the track where blockages are present. I assume and hope that L.B. Foster (and/or its representatives) was given the same opportunity and method to inspect the subject line. I wonder about the "complete walking inspection of the line" by

. Once allowed permission on the railroad, I performed the standard track condition assessment inspection that I would have done on my initial inspection and subsequent valuation had CORP allowed me on the line before the Feeder Line Application was filed.

Again, I agree with Witness Steininger's assertion<sup>14</sup> that rail having wear greater than ¼ inch can be sold on the open market if the demand is sufficient for certain rail sizes. However, it is common practice is to avoid relay classification if rail exhibits more than ¼ inch wear and it must be coincidental that all of the rail on the subject line classified as relay measured less than ¼ inch wear. Focusing on the larger segment between Vaughn and Cordes, it is hard to fathom how

would be classified as relay with none cascading into the lesser grades of (and values associated with) reroller and scrap rail. Similarly, it is hard to imagine that none of the 119 and 132 pound jointed rail warranted classification as relay. I do agree with Witness Steininger that none of the 113 pound rail should be classified as relay, because during field verification, all 113 pound rail was found to be of the HF section type, which is much less popular on the open market than its RE counterpart.

*Third, the Port used outdated metals price estimates, which are substantially below current market prices, to estimate the value of the "scrap" rail and OTM.*

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<sup>13</sup> Pettigrew V S Attachment 2, p 2-3

<sup>14</sup> Ibid.

As set forth in my June 27, 2008 V.S., I determined the relevant reroller, scrap rail and OTM prices associated with the actual date of my inspection which is the common practice in the industry. The scrap rail and OTM market is in constant flux which can and has changed significantly since my initial inspection and the date the applications were filed. CORP insinuated that these were "historical" prices and as such not applicable. This could not be further from the truth because those prices reflect the market prices on the date of my initial inspection.

Witness Pettigrew also insinuates that the AMM represents the "floor" of acceptable prices and underestimates the market prices available during any time frame. Again, this could not be further from the truth. On the week in question, AMM prices were as follows:

Reroller (per NT) .

AMM –

Scrap Rail (per NT)

AMM - 0 and

Scrap OTM (per NT)

AMM

So much AMM being the floor. It is apparent from a perusal of the above numbers that AMM indicates a higher price that week than CORP's two bid prices in every category but one.

*Fourth, the Port assumes that certain bridges would have to be removed if the line is abandoned, and then grossly overstates bridge removal costs.*

A thorough discussion already has occurred in this verified statement but I will reiterate my initial viewpoint that most bridge removal costs are approximately equal to their salvage value and therefore have no impact on the net liquidation value of a line. The exception to that generality are the two bridges crossing the major navigable waterways of the Siuslaw River and Umpqua River. Those two bridges present a major impediment to marine traffic in both rivers and will have to be removed to the satisfaction of the US Coast Guard, Army Corp of Engineers and other various governmental bodies that may have authority over those waterways.

I am not foreclosing the possibility that other bridges won't require removal at some point in time. It is possible that a certain government body, enjoined and responsible for protecting its citizens from a variety of potential hazards, may require the removal of certain bridges, some of which could engender a significant removal cost. For example, bridges that cross public highways, may require removal if they present a danger to traffic passing underneath. Other bridges may present an "attractive nuisance" opportunity for citizens who trespass on them so they may need to be fenced off or have sections removed.

None of these additional bridge removal or mitigation possibilities or costs have been reflected in my determination of the net liquidation value of this line.

*Fifth, the Port significantly overstates the costs of transportation of track materials to market.*

Witness Pettigrew falsely charges that I assumed only 77 tons per car to calculate transportation costs, which would make those costs higher and thereby result in a lower NLV result. While his charge makes a grandiose sound bite, had he taken the time to look closely at the appropriate spreadsheet that I produced as a work paper, he would have noticed that I assumed that all scrap and reroller rail would be loaded at 100 tons per car. That same spreadsheet work paper shows that I was prepared to assume that relay quality rail would have been loaded between 74 and 96 tons per car, had I found evidence that there was any such rail prior to my hi rail inspection trip. That variation by rail weight reflects maximum utilization of the capacity of a gondola rail car given that relay rail usually is shipped in rows, neatly stacked with a spacer board between the rows to protect the rail. Such handling reduces the maximum weight that can be shipped in a car in order to preserve the higher prices that such quality rail is supposed to command. Maybe CORP or its corporate parent commonly ship relay rail by just throwing it into a gondola but I assure the Board that the customers who purchase relay rail would reject rail that was not handled properly and, therefore, CORP would not receive the prices assumed in the valuations it has set forth.

Transportation of reroller and scrap steel materials was assumed by me to be shipped by rail to Chicago to maximize income, net of carload transportation costs. Relay materials were estimated to be shipped by rail to achieve market prices as far away as Chicago, Illinois. As I stated in my June 27, 2008 V.S., in order to achieve the highest GLV, relay and scrap materials were estimated to be shipped (via rail) to markets that would yield the

maximum net amounts possible. While the resulting GLV is greater by shipping those potentially longer distances, greater transportation expenses also must be reflected. Relay quality tie plates were estimated to be shipped as far away as Chicago, IL to garner maximum values in the relay market. In the case of scrap materials (reroller, scrap rail and OTM), my estimates reflect transportation to Chicago again to achieve the maximum value possible. In my attempt to achieve the maximum GLV, additional transportation expenses must be and are reflected in my calculations by estimating \$5,745 per rail car (average of \$4,605 and \$6,884 found on the UP website) for shipments between Eugene, OR and Chicago, IL<sup>15</sup>.

*Sixth, the Port overestimates the portion of OTM materials that would be "lost" during salvage operations, resulting in a large understatement of the NLV of those materials.*

My rebuttal as regards this issue centers on the use of the word "lost." I stated in my earlier V.S. and my calculations as regards the net liquidated value of other track materials (OTM) assumed that CORP would not realize value in connection with twenty percent of the OTM that theoretically is in place on the rail line. To be sure, some of the materials would be "lost" as a result of the salvaging process itself; such losses are an unavoidable outcome of the husbanding process. However, that is not the complete story because much of the OTM which *should be* in place on a rail line is not in fact in place before any salvaging commences, particularly on a light density rail line, where the investment in OTM inspection manpower and materials application cannot be justified by light traffic volumes and where the demands placed upon the track structure are so limited that the missing OTM does not place the integrity of the rail line at risk of failure. To set the record straight, I do not believe that the salvaging process alone will result in twenty percent of OTM assets being "lost" but based on my personal observation of missing OTM across the subject line I am extremely comfortable with my normal assumption that the amount of OTM tonnage that will be realized after a salvaging operation would be at least twenty percent less than the amount that theoretically would be realized were all OTM in place and none was lost through a salvaging operation.

## Conclusions

After being granted the opportunity to gain full access on the Danebo – Cordes segment

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<sup>15</sup> UP website ([www.up.com](http://www.up.com)).

of the subject line, I was able to better estimate the actual field conditions than under the contrived circumstances that circumscribed my previous assessment. Once you work past all the rhetoric, the NLV estimations produced by Unitrac and in my revised V.S. are not that far apart except in two major areas.

The largest is, of course, the cost associated with bridge removal. A thorough discussion earlier in this V.S. states why I believe that both the Suislaw and Umpqua River bridges should be removed in their entirety were the line to be abandoned and the entire removal cost borne by CORP. At this time, too many unknowns exist to accept the best case scenario set forth by CORP and its respective witness. The conservative approach would be to err on the side of a realistic approach as that proposed by the Port and its witness.

Being able to compare apples to apples is difficult in these proceedings. Because of changes I made to my Administrative and Marketing Expense category to match those advanced by Unitrac so that a simpler comparison could be made. Once that change was effected, both Unitrac and my estimate are quite close, except for the bridge removal costs.



## VERIFICATION

I, Gene A. Davis, P.E., verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Reply Verified Statement in Finance Docket No. 35160.

A handwritten signature in black ink that reads "Gene A. Davis, P.E." The signature is written in a cursive style with a large initial 'G'.

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Gene A Davis, P.E.

Dated. September 12, 2008

**Attachment A**  
**Summary of Rail Evaluated**  
**Central Oregon & Pacific Railroad - Coos Bay Branch**  
**Revised As of August 15, 2008**

Milepost		Rail			Control	
East	West	Section	Rolled	Type	Cooled	Miles

**Main Track:**

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Attachment A  
Summary of Rail Evaluated  
Central Oregon & Pacific Railroad - Coos Bay Branch  
Revised As of August 15, 2008

**PUBLIC VERSION**

Milepost		Rail			Control	Miles
East	West	Section	Rolled	Type	Cooled	

**Yard Tracks and Sidings:**

Source. RLBA

**Notes**

- 1) Verified - August 13, 2008 - 132 RE (transposed) 1956 on left rail, 132 HF 1948 on right rail
- 2) Verified - August 13, 2008 - 113 HF 1947 - both rails.
- 3) Verified - August 13, 2008 - 113 HF 1947 - both rails - heavy head wear
- 4) Changed - August 13, 2005 - 115 RE 2005 on high rail, 113 HF 1945 (transposed) on low rail.
- 5) Verified - August 13, 2008 - 112 RE 1935 - both rails - high rail was very curve worn.
- 6) Verified - August 13, 2008 - 112 RE 1939 - both rails.
- 7) Verified - August 13, 2008 - 112 RE 1936 - both rails - high rail was very curve worn.
- 8) Changed - August 13, 2008 - 115 RE 2005 on high rail , 113 HF 1941 on low rail (very flat).
- 9) Verified - August 13, 2008 - 112 RE 1938 - both rails.
- 10) Changed - August 13, 2008 - 132 HF 1955 - both rails.
- 11) Verified - August 13, 2008 - 112 RE 1938 - both rails.
- 12) Changed - August 14, 2008 - 136 RE 2005 - both rails.
- 13) Verified - August 14, 2008 - 112 1936 - both rails
- 14) Verified - August 14, 2008 - 112 RE 1940 (flat head) - both rails.
- 15) Verified - August 14, 2008 - 113 HF 1941 - both rails.
- 16) Verified - August 14, 2008 - 112 RE 1937 - both rails
- 17) Verified - August 15, 2008 - 136 RE 1970 (low rail) and 1975 (high rail).
- 18) Verified - August 15, 2008 - 112 RE 1936 - both rails.
- 19) Verified - August 15, 2008 - 112 RE 1936 - both rails.
- 20) Verified - August 15, 2008 - 113 HF 1942 - both rails.
- 21) Verified - August 15, 2008 - 113 HF 1942 - both rails.

Attachment B  
 Net Liquidation Value of Track Assets  
 Of the Central Oregon & Pacific Railroad - Coos Bay Branch  
 Between Danebo and Cordes, Oregon  
 Revised As of August 15, 2008

	Unit(s)	Unit Cost	Total	Grand Total
<b>Track Nominal Value:</b>				
Relay Railroad Materials			\$9,907,300	
Scrap and Reroll Materials (net of transportation)			16,724,400	
Ties and Non-steel Materials			<u>1,203,400</u>	
Gross Liquidation Value				\$27,835,100
<b>Preparation Cost Adjustments:</b>				
Rail & OTM Removal - Fit (miles)	12.4	\$14,000	(173,000)	
Rail & OTM Removal - Scrap (miles)	104.3	12,000	(1,251,700)	
Turnout Removal - Fit (each)	27	500	(13,500)	
Turnout Removal - Scrap (each)	14	400	<u>(5,600)</u>	
Total Adjustments				(1,443,800)
<b>Restoration Cost Adjustments:</b>				
Permanent Tunnel Closure Expense	9	10,000	(90,000)	
Highway Crossing - Public (each)	33	2,000	(66,000)	
Highway Crossing - Private (each)	43	350	<u>(15,100)</u>	
Total Adjustments				(171,100)
Preliminary Track Liquidation Value				<u>\$26,220,200</u>
<b>Transportation Expense</b>				
Relay Steel Materials - To Chicago, IL	169	5,745	(970,900)	
Scrap Steel Materials - To Chicago, IL	236	5,745	(1,355,800)	
<b>Administrative and Marketing Expense</b>				
Yard Costs				
Job Fee				
Cost of Money			(663,831)	
Profit			(3,380,689)	
Total Estimated Expense				(6,902,169)
<b>Net Liquidation Value before Bridge Removal Cost</b>				<u><b>\$19,318,031</b></u>
Bridge Removal Cost (Siuslaw and Umpqua Rivers)			(5,995,000)	
<b>Net Liquidation Value</b>				<b>13,323,031</b>

Source: Attachment C; RLBA estimate

Attachment B  
 Net Liquidation Value of Track Assets  
 Of the Central Oregon & Pacific Railroad - Coos Bay Branch  
 Between Danebo and Cordes, Oregon  
 As of September 21, 2007  
 Revised as of September 12, 2008

	Unit(s)	Unit Cost	Total	Grand Total
<b>Track Nominal Value</b>				
Relay Railroad Materials			\$7,674,500	
Scrap and Reroll Materials			7,669,300	
Ties and Non-steel Materials			<u>1,203,400</u>	
Gross Liquidation Value				\$16,547,200
<b>Preparation Cost Adjustments</b>				
Rail & OTM Removal - Fit (miles)	12.4	\$14,000	(173,000)	
Rail & OTM Removal - Scrap (miles)	104.3	12,000	(1,251,700)	
Turnout Removal - Fit (each)	27	500	(13,500)	
Turnout Removal - Scrap (each)	14	400	<u>(5,600)</u>	
Total Adjustments				(1,443,800)
<b>Restoration Cost Adjustments</b>				
Permanent Tunnel Closure Expense	9	10,000	(90,000)	
Highway Crossing - Public (each)	33	2,000	(66,000)	
Highway Crossing - Private (each)	43	350	<u>(15,100)</u>	
Total Adjustments				(171,100)
Preliminary Track Liquidation Value				<u>\$14,932,300</u>
<b>Transportation Expense</b>				
Relay Steel Materials - To Chicago, IL	169	5,745	(970,900)	
Scrap Steel Materials - To Chicago, IL	236	5,745	<u>(1,355,800)</u>	
<b>Administrative and Marketing Expense</b>				
Yard Costs				
Job Fee				
Cost of Money			<u>(368,182)</u>	
Profit			(1,947,777)	
Total Estimated Expense				(5,173,608)
<b>Net Liquidation Value before Bridge Removal Cost</b>				<u>\$9,758,692</u>
Bridge Removal Cost (Siuslaw and Umpqua Rivers)				
<b>Net Liquidation Value</b>				<u>\$9,758,692</u>

Source: Attachment C, RLBA estimate

Attachment B  
 Net Liquidation Value of Track Assets  
 Of the Central Oregon & Pacific Railroad - Coos Bay Branch  
 Between Danebo and Cordes, Oregon  
 As of September 24, 2004  
 Revised as of August 15, 2008

	Unit(s)	Unit Cost	Total	Grand Total
<b>Track Nominal Value</b>				
Relay Railroad Materials			\$3,991,200	
Scrap and Reroll Materials			6,617,900	
Ties and Non-steel Materials			<u>1,103,300</u>	
Gross Liquidation Value				\$11,712,400
<b>Preparation Cost Adjustments</b>				
Rail & OTM Removal - Fit (miles)	12.4	\$14,000	(173,000)	
Rail & OTM Removal - Scrap (miles)	104.3	12,000	(1,251,700)	
Turnout Removal - Fit (each)	27	500	(13,500)	
Turnout Removal - Scrap (each)	14	400	<u>(5,600)</u>	
Total Adjustments				(1,443,800)
<b>Restoration Cost Adjustments</b>				
Permanent Tunnel Closure Expense	9	10,000	(90,000)	
Highway Crossing - Public (each)	33	2,000	(66,000)	
Highway Crossing - Private (each)	43	350	<u>(15,100)</u>	
Total Adjustments				(171,100)
Preliminary Track Liquidation Value				<u>\$10,097,500</u>
<b>Transportation Expense</b>				
Relay Steel Materials - To Chicago, IL	169	5,745	(970,900)	
Scrap Steel Materials - To Chicago, IL	236	5,745	(1,355,800)	
<b>Administrative and Marketing Expense</b>				
Yard Costs				
Job Fee				
Cost of Money			(241,189)	
Profit			<u>(1,346,744)</u>	
Total Estimated Expense				(4,445,561)
Net Liquidation Value Before Bridge Removal				<u>\$5,651,939</u>
<b>Bridge Removal Cost (Siuslaw and Umpqua Rivers)</b>				
Net Liquidation Value				<u>\$5,651,939</u>

Source: Attachment C RLBA estimate.

**Attachment C**  
**Gross Liquidation Value of Track Assets**  
**Of the Central Oregon & Pacific Railroad - Coos Bay Branch**  
**Between Danebo and Cordes, Oregon**  
**Revised As of August 15, 2008**

**R L BANKS & ASSOCIATES, INC.**

Attachment C  
Gross Liquidation Value of Track Assets  
Of the Central Oregon & Pacific Railroad - Coos Bay Branch  
Between Danebo and Cordes, Oregon  
Revised As of August 15, 2008

Miles			Re-Usable				Scrap and Reroll				
Fit	Scrap	Description	Condition	Quantity per mile	Total	Percent	Value (a)	Unit	Percent	Value (b)	Grand Total (a + b)
OTHER TRACK MATERIAL:											
12 36	104 31	Ties	Relay	Each	3,168	Each	369,618	17	%	\$14.00	\$869,800
12 36	104 31	Ties	Landscape	Each	3,168	Each	369,618				886,300
12 36	104 31	Ties	Scrap	Each	3,168	Each	369,618				(552,700)
4 59	18 60	Tie Plates 7 3/4 -14 DS	Relay	Each	6,336	Each	146,932	97		11 60	1,653,300
7 77	29 08	Tie Plates 7 1/2 -13 DS	Relay	Each	6,336	Each	233,482	97		10 60	2,400,700
0 00	48 53	Tie Plates 7 1/2 -12 DS	Relay	Each	6,336	Each	307,486	97		9.75	2,908,000
0 00	3 05	Tie Plates 7 1/2 -11 SS	Scrap	Ton	71.1	Ton	217				
0 00	4 38	Tie Plates 90# SS	Scrap	Ton	53 1	Ton	233				
0 00	0 67	Tie Plates 85# SS	Scrap	Ton	53 1	Ton	36				
1 13		Jt. Bars 136#	Relay	Pair	271	Pair	307	97		55 00	16,400
2 00		Jt Bars 132#	Relay	Pair	271	Pair	541	97		55 00	28,900
0 36		Jt Bars 115#	Relay	Pair	271	Pair	96	97		55 00	5,100
6 65		Jt Bars 112#	Relay	Pair	271	Pair	1,799	97		55 00	96,000
	5 67	Jt Bars 136#	Scrap	Ton	10.5	Ton	60				
	10 00	Jt. Bars 132#	Scrap	Ton	10 5	Ton	105				
	0 25	Jt. Bars 131#	Scrap	Ton	10 5	Ton	3				
	0 20	Jt. Bars 130#	Scrap	Ton	9 5	Ton	2				
	0 12	Jt Bars 115#	Scrap	Ton	9 5	Ton	1				
	40 06	Jt Bars 113#	Scrap	Ton	9 5	Ton	382				
	33 23	Jt Bars 112#	Scrap	Ton	9 5	Ton	316				
	3 05	Jt Bars 110#	Scrap	Ton	9 5	Ton	29				
	4 38	Jt Bars 90#	Scrap	Ton	8.9	Ton	39				
	0 67	Jt Bars 85#	Scrap	Ton	6.9	Ton	5				
		Rail Anchors	Relay	Each	2,978	Each	36,815	50		0 82	15,100
12 36	104 31	Rail Anchors	Scrap	Ton	3 7	Ton	391				
12 36	104 31	Spikes	Scrap	Ton	5 1	Ton	591				
12 36	104 31	Bolts & Washers	Scrap	Ton	1 4	Ton	165				
TOTAL OTHER TRACK MATERIAL							\$7,993,300				
TURNOUTS:											
27		Fit Turnouts	Fit	Each	1	Each	27	100	%	\$2,500	\$67,500
14		Scrap Turnouts	Scrap	Ton	5	Ton	70				
27	14	TOTAL TURNOUTS									
GRAND TOTAL							\$10,777,100				
							\$17,058,000				\$27,835,100

Notes Dollar amounts are rounded to the nearest hundred, tons to the nearest tenth, units to the nearest integer. Minor rounding errors due to significant digits (two versus three).

136, 132, 115, 113 AND 112 pound CWR is assumed to have fifty percent of the joint bars as regular jointed rail as most CWR is actually two 39 foot sticks welded together

Source Vendors, and RLBA estimates



**Attachment D**  
**Yard Tracks and Sidings Summary**  
**Central Oregon & Pacific Railroad - Coos Bay Branch**  
**Revised As of August 15, 2008**

		Mileage (by Rail Weight)
MP	660.3 Veneta Siding	
	665.3 Noti Industry Track - Swanson Brothers	
	665.3 Noti Industry Track - Swanson Group	
	668.3 Vaughn Lead Track	
	668.3 Vaughn Runaround Track	
MP	697.7 Siuslaw Industry Track (American Laminate)	
	698.1 Siuslaw Industry Track (Murphy Spur)	
	705.3 Mapleton Siding	
	705.5 Mapleton Industry Track (Eagle Veneer)	
	709.0 Beck Siding	
MP	715.0 Wendson Siding	
	716.2 Cushman Industry Track (former siding)	
	721.3 Canary Industry Track (former siding)	
	728.0 Tunnel 17 Spur Track (former Booth Siding)	
	734.4 Tunnel 18 Spur Track	
MP	736.8 Industry Track	
	738.8 Gardiner Siding	
	738.8 LPN Access Track	
	740.4 Reedsport Siding	
	740.1 Reedsport Industry Track # 1	
MP	745.0 Tunnel 19 Spur Track (former Tharp Siding)	
	759.3 Hauser Siding	
	763.0 Cordes Siding	
	763.0 Cordes House Track	
	Subtotals =	
		Total Mileage (by Rail Weight)

**Grand Total (All Yard Tracks & Sidings) =**  **Miles**

**Notes:** CORP is assumed to only own about two rail lengths to the deraul on industry tracks.  
 Estimates reflect LPN ownership to clearance point of Gardiner Siding.

**Source:** RLBA

1

**PUBLIC VERSION**

PUBLIC VER

Attachment E  
Summary of Turnouts  
Central Oregon & Pacific Railroad - Coos Bay Branch  
Revised As of August 15, 2008

Location			Condition		Rail		Frog		Switch Points			Switch Stand		Comments
Pre	MP	Suf	Relay	Scrap	Weight	Type	Size (#)	Weight	P	S	Lead	Manual	Power	

Note. All rail is "RE" unless otherwise noted HF = Head Free  
P = Plano Point, S = Sampson Point, LH = Left hand turnout, RH = Right hand turnout  
RBM = Rail bound manganese, MSG = Solid manganese self-guarded

Source RLBA

PUBLIC VERSION

Attachment F  
 Summary of Tie Condition  
 Central Oregon & Pacific Railroad - Coos Bay Branch  
 Revised As of August 15, 2008  
 (Sample Blocks of 100)

	<b><u>Location</u></b>	<b><u>Relay</u></b>	<b><u>Landscape</u></b>	<b><u>Scrap</u></b>
MP	652.7	30	56	14
	656.5	7	61	32
	662.8	26	48	26
	666.7	40	50	10
	671.0	19	37	44
	677.5	10	37	53
	683.3	16	55	29
	688.0	19	68	13
	693.5	11	55	34
	697.8	4	70	26
	702.8	9	48	43
	706.5	3	68	29
	712.2	32	19	49
	718.9	5	47	48
	722.7	26	59	15
	732.4	29	44	27
	736.9	9	42	49
	740.4	21	60	19
	748.3	14	54	32
	752.0	14	67	19
	759.6	9	74	17
	Average % Totals	<u>17</u>	<u>53</u>	<u>30</u>

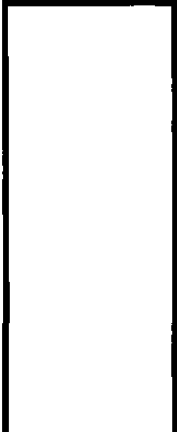
With tie spacing of 20 inches on center equates to 3,168 ties per mile

Expect average of	<b>533</b>	Relay ties per mile
	<b>1,688</b>	Landscape ties per mile
	<b>947</b>	Scrap ties per mile

Source: RLBA

**Source:** Attachment A, HIRBA calculations from CORP track chart and field inspection

Attachment H  
Track Material Unit Market Prices  
Central Oregon & Pacific Railroad - Coos Bay Branch  
Originally As of Week - April 17, 2008  
Revised As of August 15, 2008

	Unit Prices Per		Comments	
	Component	Net Tons		
<b>Steel (Rail)</b>				
Rail 136 pound per yard, Jointed, Fit #2		\$1,050	8/19/2008	LBF
Rail 136 pound per yard, CWR, Fit #2		1100	8/19/2008	LBF
Rail 132 pound per yard, Jointed, Fit #2		1050	8/19/2008	LBF
Rail 132 pound per yard, CWR, Fit #2		1100	8/19/2008	LBF
Rail 115 pound per yard, CWR, Fit #1		1150	8/19/2008	LBF
Rail 115 pound per yard, CWR, Fit #2		1100	8/19/2008	LBF
Rail 112 pound per yard, Jointed, Fit #2		1050	8/19/2008	LBF
Rail 112 pound per yard, CWR, Fit #2		1100	8/19/2008	LBF
Rail Reroll*		742	8/15/2008	AMM
Rail Scrap*		715	8/15/2008	AMM
<b>Steel (OTM)</b>				
Scrap OTM*		670	8/15/2008	AMM
Tie Plates, D/S, 14" long, Fit			8/22/2008	Unitrac
Tie Plates, D/S, 13" long, Fit			8/22/2008	Unitrac
Tie Plates, D/S, 12" long, Fit			8/22/2008	Unitrac
Joint Bars, 136/132/131 pound per yard, Fit			8/22/2008	Unitrac
Joint Bars, 115/112 pound per yard, Fit			8/22/2008	Unitrac
Anchors, Fit			8/22/2008	Unitrac
<b>Timber (Ties)</b>				
Relay (ea)			8/22/2008	Unitrac
Landscape (ea)			8/22/2008	Unitrac
Scrap (ea)			8/22/2008	Unitrac

Source. American Metal Market, L.B. Foster, Unitrac and RLBA estimates.

- Notes
- 1) \* = Converted from AMM gross ton delivered price to price per net ton for consistency.
  - 2) RLBA used the L.B. Foster relay rail prices - Pettigrew V.S. Attachment 3 and adjusted for the value decrease of jointed rail and the increase between Fit #1 and #2 in the 115 pound CWR.
  - 3) RLBA used the Unitrac relay OTM prices - Pettigrew V.S Attachment 1.
  - 4) Relay and landscape ties include sorting and handling

Attachment I  
Summary of Shipping Volumes  
Central Oregon & Pacific Railroad - Coos Bay Branch  
Revised As of August 15, 2008

	Rail Size									
	85	90	110	112	113	115	130	131	132	138
Tons per gon (stacked relay rail) =	79	89	88	87	88	90	91	92	93	95
Tons per gon (scrap & reroller rail) =	100	100	100	100	100	100	100	100	100	100
Net Tons of Relay Rail (Welded) =	N/A	0	0	164	0	144	0	0	311	376
Net Tons of Relay Rail (Jointed) =	0	0	0	1228	0	0	0	0	309	84
Number of cars (relay rail) =	0	0	0	16	0	2	0	0	7	5
Net Tons of Reroller Rail =	80	555	472	5,281	7,722	29	37	46	2,324	1,724
Number of cars (reroller rail) =	1	6	5	53	77	0	0	0	23	17
Net Tons of Scrap Rail =	20	139	118	364	1931	19	9	12	155	115
Number of cars (scrap rail) =	0	1	1	4	19	0	0	0	2	1
Total cars for each rail weight (rail) =	1	7	6	73	96	2	0	0	32	23
Total cars (rail) =	240									
Number of Relay Tie Plates (tangent) =	0	0	0	307,486	233,482	0	0	0	146,932	0
Number of Relay Tie Plates (curve) =	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0
Net Tons of Relay OTM (tan TPs) =	0	0	0	3,229	2,452	0	0	0	8,081	0
Net Tons of Relay OTM (curve TPs) =	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0
Number of cars (relay tie plates) =	0	0	0	32	25	0	0	0	81	0
Number of Relay Jt Bars (4 hole) =	0	0	0	1,799	0	96	0	0	541	307
Number of Relay Jt Bars (6 hole) =	0	0	0	0	0	0	0	0	0	0
Net Tons of Relay OTM (Jt Bars-4 hole) =	0	0	0	94	0	5	0	0	19	11
Net Tons of Relay OTM (Jt Bars-6 hole) =	0	0	0	0	0	0	0	0	0	0
Number of cars (relay jt bars) =	0	0	0	1	0	0	0	0	0	0
Total cars (relay OTM) =	0	0	0	33	25	0	0	0	81	0
Net Tons of Scrap OTM =	5	39	29	2,019	382	1	2	3	105	60
Total cars (scrap OTM) =	0	0	0	20	4	0	0	0	1	1
Total cars (OTM) =	165									
Number of cars (relay rail) =	30									
Number of cars (relay OTM) =	139									
Number of cars (reroller rail) =	182									
Number of cars (scrap rail) =	28									
Number of cars (scrap OTM) =	26									
<b>Total</b>	<b>405</b>									

Notes Use 100 ton gon, stacked rails per gon varies by size (one inch board between layers)

Assume full 100 ton load for reroller and scrap materials

Assume full 100 ton load for relay OTM

Assume tie plate weights of 12# for 90#, 15# for 100#, 17# for 105# & 110# 21# for 112# & 115# & 118#, 23 # for 131# & 132# & 133# (avg) and 35# for 131# & 132# & 133# (big)

Assume joint bar weights of 70# for rail up to 90#, 80# for 100 through 110#, 105# for 112 through 116# 110# for 131 through 138#

Tie plates are grouped together by base width with the predominate size showing the total number

Source Attachment Three

R L BANKS & ASSOCIATES, INC **b**

**Attachment J**  
**Siuslaw River Bridge Removal Costs**  
**Central Oregon & Pacific Railroad - Coos Bay Branch**  
**Revised As of August 15, 2008**

Process	Number	Unit	Cost	Subtotal	Total	Comments
Permits	0	5				
Mobilization	1	LS				
Steel Spans (note 3)	1	LS				
Wood Spans	1	LS				
Pile Removal (Revised)	1	LS				
Pier Removal	1	LS				
Engineering (includes Plans)	1	LS				
Diver Verifications (note 4)	1	LS				
Wood Trestle Over Wet Land	1	LS				
Bridge Over Roads/Highways	1	LS				
Cofferdam/De-water	1	LS				
Wetland Protection	1	LS				
Lead Abatement (note 5)	3	EA				
<b>Subtotal Removal Costs = (\$3,213,900)</b>						
Proceeds from sale of scrap steel (note 6)	1,056	TON				
Shipping costs - steel to Chicago	1,056	TON				
Shipping costs - concrete to disposal facility (note 7)	1,203	TON				
Shipping costs - wood to disposal facility (note 8)	1,650	TON				

Net proceeds from materials = **\$319,300**

**Total = (\$2,894,600)**

Notes: 1) LS = Lump Sum, Costs rounded to the nearest hundred dollars

2) Dana Siegfried V S Attachment B

3) Assume lead coating on steel spans

4) RLBA zeroed out the diver verification line item due to the use of cofferdams

5) RLBA estimated lead abatement per truss span at \$50,000 each after reviewing the Dana Siegfried V S and Maloney V S

6) RLBA assumed shipping steel to Chicago - AMM - August 15, 2008 - No 1 Heavy Melt

Assume steel truss spans weigh about 1 5 tons per foot @ 686 feet or about 1,029 tons.

Assume steel beam spans weigh about 0 5 tons per foot @ 54 feet or about 27 tons

7) RLBA used some concrete data from Maloney V S p 6 and 11 assuming ability to dispose of locally

8) RLBA used some wood data from Maloney V S p 11 and 12

Source: Staton Companies Original and Revised Bridge Estimate, RLBA estimates



**Attachment K**  
**Umpqua River Bridge Removal Costs**  
**Central Oregon & Pacific Railroad - Coos Bay Branch**  
**Revised As of August 15, 2008**

Process	Number	Unit	Cost	Subtotal	Total	Comments
Permits	0.5	LS				
Mobilization	1	LS				
Steel Spans (note 3)	1	LS				
Wood Spans	1	LS				
Pile Removal (Revised)	1	LS				
Pier Removal	1	LS				
Engineering (includes Plans)	1	LS				
Diver Verifications (note 4)	1	LS				
Wood Trestle Over Wet Land	1	LS				
Bridge Over Roads/Highways	1	LS				
Cofferdam/De-water	1	LS				
Wetland Protection	1	LS				
Water @ 30' deep	1	LS				
Lead Abatement (note 5)	11	EA				
<b>Subtotal Removal Costs = (\$3,994,500)</b>						
Proceeds from sale of scrap steel (note 6)	2,400	TON				
Shipping costs - steel to Chicago	2,400	TON				
Shipping costs - concrete to disposal facility (note 7)	3,360	TON				
Shipping costs - wood to disposal facility (note 8)	191	TON				
<b>Net proceeds from scrap steel</b>						
<b>Total = (\$3,100,400)</b>						

Notes 1) LS = Lump Sum, Costs rounded to the nearest hundred dollars

2) Dana Siegfried V S. Attachment B

3) Assume lead coating on steel spans

4) RLBA zeroed out the diver verification line item due to the use of cofferdams

5) RLBA estimated lead abatement per truss span at \$50,000 each after reviewing the Dana Siegfried V.S and Maloney V S.

6) RLBA assumed shipping steel to Chicago - AMM - August 15, 2008 - No 1 Heavy Melt

Assume steel truss spans weigh about 1.5 tons per foot @ 1,598 feet or about 2,400 tons

7) RLBA used the concrete cubic yards from Maloney V S p 11

8) RLBA used some wood data from Maloney V S p 11 and 12

Source Staton Companies Original and Revised Bridge Estimate, RLBA estimates

# STATON

## COMPANIES

DEMOLITION  
ENVIRONMENTAL  
SITEWORK  
CONTRACTORS  
OR CCB # 03371

**DATE:** September 08, 2008

**TO:** Port Of Coos Bay

**FROM:** Ron Richey (ron@statonco.com)

**SUBJECT:** CORP, Bridge 716 4 (Siuslaw), Bridge 739.68 (Umpqua); Demolition

Please accept our +/- 10% budget proposal to perform specific bridge demolition services at the above referenced project as follows:

### SCOPE OF SERVICES

Provide all labor, equipment, transportation, disposal fees to remove and dispose of the 2 bridges referenced above. Port of Coos Bay (POCB) to provide all Local, State, and Federal permits. Work over water, and in-stream protection for pile removal, and column/footing removals, will consist of floating silt curtains and floating log or sock booms. Costs for any additional in water work protection measures are not included in this proposal. Staton assumes working weight on existing bridges to be 100 tons. Staton to cut or break all pile off at existing grades, or mud line. Pile extraction is not included in this proposal. Concrete piers to be removed to 2' below grade on land, or to mud line in water. Changes to above work scope or methods will require pricing re-evaluation. Working depth in water at low tide assumed at 20' or less. Proposal is valid for 60 days. Bid items can be separated but may require minor price adjustments for additional mobilization and start up costs.

### PRICE OF SERVICES (Proposal Valid For 60 Days)

BID ITEM	Bridge 716 4 (Siuslaw)	SCHEDULE	Bridge 739.68 (Umpqua)	SCHEDULE
Mobilization	76,510 00	2 weeks	76,510 00	2weeks
Steel Spans	438,605 00	6 weeks	865,550 00	16 weeks
Wood Spans	26,430.00	6 days	36,308 00	1 week
Pile Removal	43,372 00	4 weeks	26,783.00	6 weeks
Pier Removal	104,660 00	6 weeks	281,062.00	16 weeks
Engineering	25,000 00	NA	25,000.00	NA
Diver Verifications	20,000 00	15 days	20,000 00	15 days
Wood Trestle Over Wet Land	821,360 00	4 weeks	0.00	NA
Bridge Over Roads/Highways	131,340 00	2 weeks	\$11,000 00 NA	NA
<b>TOTALS</b>	<b>\$1,887,277.00</b>		<b>\$1,342,213.00</b>	

### EXCLUSIONS

Permits, bond (add 1 75%). Cofferdams or in water stream protection other than listed above. Wetland work area protection. "Engineered" demolition plans. Earthwork other than to accomplish bridge removal.

Relative to the exclusions and assumptions listed on this proposal, we have developed a table of price options that may be of some use in your evaluation. Although Staton does not perform this type of work, and these numbers are not bid items, we have obtained some range of magnitude costs from firms that do. We suggest that you perform your own price requests from experienced contractors in their respective fields in this work.

### The Art Of Demolition

85386 HIGHWAY 99 S • PO BOX 7515 • EUGENE, OR 97401 • PH 541-726-9422  
CCB NO 03371 [www.statonco.com](http://www.statonco.com) FAX 541-726-9837

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# **STATON**

## **COMPANIES**

DEMOLITION  
ENVIRONMENTAL  
SITEWORK  
CONTRACTORS  
OR CCB # 03371

WORK ITEM	Bridge 716.4 (Siuslaw)	SCHEDULE	Bridge 739.68 (Umpqua)	SCHEDULE
Coffer Dam/De-water	\$600K - 800K	12-15 Weeks	\$1.5M - \$1.9M	8-10 Weeks
Permitting	\$65K	NA	\$65K	NA
Pile Removal	\$250K - \$350K	6-8 weeks	\$250K - \$350K	6-8 weeks
Wet Land Protection	\$128K	2-4 Weeks	NA	
Water @ 30' deep	Add \$187K	Add 4 weeks	Add \$437K	Add 8 Weeks
Engineered Plans	\$50K	NA	\$50K	NA

Yours Very Truly  
Staton Companies

**RON RICHEY**

Port of Coos Bay CORP 090808

G M

### **The Art Of Demolition**

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Coos Bay, OR 97420

Ph (541) 267-7689

Fax (541) 267-2132

www.westcoastcontractors.com

OR Contractors Board Number  
63710

CA Contractors License Number  
511500 Class A, B

WA Contractors License Number  
WestCC199207

**Date:** September 11, 2008

**To:** Oregon International Port of Coos Bay

**From:** David Kronsteiner, President; West Coast Contractors

**Project:** Bridge Removal: Siuslaw River at Cushman and  
Umpqua River at Reedsport / Central Oregon & Pacific  
(CORP) Railroad – Coos Bay line

**Scope of Work:** Demolition, removal of two (2) railroad bridges, provide labor, required equipment, transportation and disposal, excluding permits, of all materials. It is expected that lead-based paint will be encountered during deconstruction work. The Port or designated project manager will provide all required local, state and/or federal permits required for project. In-water work will occur during designated work window – November 1 through February 15 on Siuslaw River and November 1 through January 31 on Umpqua River.

**Siuslaw River Bridge**

▶ Mobilization.	\$313,600.00
▶ Setup and Tear Down:	135,500.00
▶ Remove Bridge Spans:	259,080.00
▶ Remove Center Span	370,600.00
▶ Remove Piers:	1,503,500.00
▶ Environmental Protection.	<u>71,900.00</u>

**Total for Siuslaw Bridge: \$2,654,180.00**

**Umpqua River Bridge**

▶ Mobilization:	\$375,000.00
▶ Setup and Tear Down:	196,000.00
▶ Remove Bridge Spans.	1,188,000.00
▶ Remove Center Span.	338,000.00
▶ Remove Piers.	3,240,000.00
▶ Environmental Protection	<u>128,800.00</u>

**Total for Umpqua Bridge: \$5,465,800.00**

**Exclusions:** Permits, bonds, locate/relocate and damage to utilities in work area, traffic control and/or barricades, surveys and other reasonable and customary items

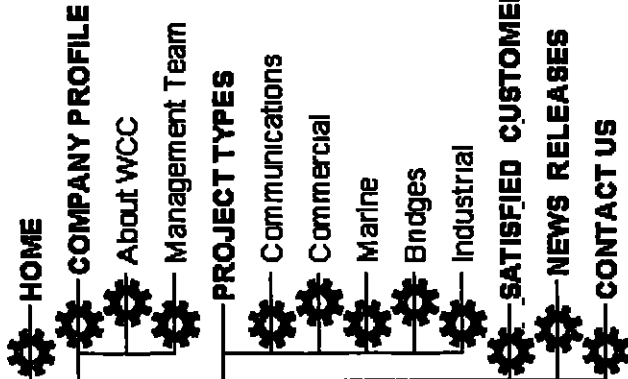
*"Building  
a Better Today  
with Tomorrow's  
Technology"*



## Company Profile

West Coast Contractors, Inc (WCC) is a major general contractor and developer of quality commercial, marine, all-weather and all-terrain construction work. Based out of Coos Bay, Oregon, WCC, utilizing effective scheduling and budgetary control mechanisms, WCC provides innovative, cost-effective solutions for the most challenging construction projects to clients in Northern California, Oregon, and Washington.

Building today...  
with tomorrow's technology.



Founded in 1962 by Joe Kronsteiner, the past four decades have witnessed the growth and diversification of WCC from a heavy construction equipment service into communications/high-tech, commercial, marine/all-weather, and bridge/all-terrain construction services powerhouse. During this expansion, WCC has remained a family business, and offers clients a rare combination of hands-on personal management, with world-class, cutting-edge collaborative technology.

### Communications/High Tech

- Utilities Installation
- Tower Erection
- Tenant Improvements
- Structural Enhancements
- Switch Center Facility Construction
- Warehousing & Storage
- Turn-Key Construction Projects
- Site Maintenance

### Commercial Construction Services

- Remodel & Renovations
- Tenant Improvements
- Retail Facilities
- Medical Facilities
- Warehouse & Industrial
- Metal Buildings

### Marine Construction Services

- Dredging
- Pile Driving
- Demolition
- Pile Extraction
- Dock Dismantling
- Dock Construction: Concrete Docks, Timber Docks
- Bridge Construction
- Sheet Piles & Cofferdams

### Bridge Construction Services

- Bridge repairs
- Scour prevention
- Prefabricated bridge installation
- Bridge construction

In addition to the full spectrum of construction solutions that WCC provides, they are breaking new ground by consulting constructability issues. Their in-depth knowledge of the structural, mechanical and electrical requirements of a project allows them to participate in design, planning, and liaison phases, ensuring projects are completed using time and cost-effective solutions

### **West Coast Contractors**

An Oregon construction company providing commercial construction solutions in the West US.

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Phone: (541) 267-7889 | Fax: (541) 269-1600 | [contactus@westcoastcontractors.com](mailto:contactus@westcoastcontractors.com)

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# Gene A. Davis, P.E.

## Director, Transportation Engineering

### Education

MBA, Georgia Southern University, 1997

BS, Civil Engineering, Tennessee Technological University, 1983

### Professional Registrations and Affiliations

Registered Professional Civil Engineer

American Railway Engineering and Maintenance-of-Way Association, member since 1996

AREMA Committee 18 (Light Density & Short Line Railways) Chairman and 12 (Rail Transit) Member

### Years of Transportation Experience

24

### Qualifications

Mr. Davis joined RLBA after 18 years of experience with Norfolk Southern Corporation during which he held positions with increasing responsibility within the Engineering Department spanning management and engineering of railroad track structure, bridge and building inspection, condition assessment, maintenance, rehabilitation, design and construction as well as railroad operations.

### Relevant Project Experience

- **Kansas City Southern (KCS)** Inventoried, physically inspected, assessed condition and estimated the net liquidation value of the track structure in a segment of KCS railroad right-of-way near Vicksburg, MS totaling about 1.9 miles – produced a net liquidation value report of the track structure which was attached to a Verified Statement submitted to the Surface Transportation Board, supporting an abandonment exemption of the subject line in response to Notice of Intent to File an Offer of Financial Assistance made by the remaining shipper on the line.
- **WATCO Companies** Inventoried, assessed condition and estimated the desktop net liquidation value of owned and leased track structure of properties including the Kansas and Oklahoma Railroad, South Kansas & Oklahoma Railroad, Eastern Idaho Railroad and the Timber Rock Railroad totaling about 1,573 miles in Colorado, Idaho, Kansas, Louisiana, Oklahoma and Texas.
- **Iowa Northern Railway Company** Inventoried, physically inspected, assessed condition and valued railroad right-of-way between Cedar Rapids and Waterloo, IA and between Cedar Falls and Manly, IA. Net liquidation values were placed on the physical assets of both segments before and after track rehabilitation which were utilized in a FRA RRIF application.
- **SF&L Railroad** Inventoried, physically inspected, assessed condition and valued railroad right-of-way between Peoria and La Harpe, IL. A net liquidation value was placed on the track structure.
- **Philadelphia, Bethlehem and New England Railroad** Performed an NLV and replacement cost estimate utilizing all new materials via a physical track inspection of approximately 42 miles of this switching carner.
- **Rocky Mount and Western Railroad Company, Inc.** Inventoried and estimated the desktop net liquidation value of existing Rocky Mount and Western Railroad Co., Inc track structure, bounded by Momeyer and Spring Hope, totalling over five miles, assumed to be in scrap condition, to be utilized in an Offer of Financial Assistance by the State of North Carolina.

- **Windsor & Hantsport Railway (WHRC)** Participated in updating a prior desktop engineering assessment as part of a going-concern valuation of this Canadian shortline railroad. Examined engineering data and estimated the costs of addressing both infrastructure program and ongoing routine, maintenance requirements
- **Windsor & Hantsport Railway (WHRC)** Participated in desktop engineering assessment as part of a going-concern valuation of this Canadian shortline railroad. Examined engineering data and estimated the costs of addressing both infrastructure program and ongoing routine, maintenance requirements.
- **State of Washington Department of Transportation** Inventoried, physically inspected, assessed condition and valued portions of the Palouse River and Coulee City Railroad between Cheney, WA and Coulee City, WA and between Marshall, WA and Hooper Junction, WA as well as all diverging routes in Idaho and Washington, totaling 347-miles and provided a point-by-point rebuttal to comments made by a review appraiser. Net liquidation values were placed on the physical assets of six, separate sub-segments as well as the whole.
- **North Carolina Department of Transportation** In connection with the State's desire to purchase the lines from CSXT, inventoried, assessed condition and estimated the desktop net liquidation value of three segments of CSX railroad right-of-way, bounded by Ridgeway and Hamlet, NC, including the diverging line segment between Apex and Durham, NC totally 192 miles.
- **Florida Department of Transportation** Assisted a FDOT in its negotiation with CSX to institute new commuter rail service by valuing approximately 70 miles of the freight railroad's main line infrastructure.
- **Dallas Area Rapid Transit (DART)** Provided professional rail line valuation consulting services regarding four line segments in the Dallas/Fort Worth area. Physically inspected and valued over 49 miles of rail assets. Recommendations were to be given as to how the fair market value may be incorporated as a component of a fair and reasonable annual fee for use of the rail lines by other rail passenger service agencies.
- **The City of Cincinnati** Inventoried, physically inspected, assessed condition and estimated the net liquidation value of the track structure in a segment of Norfolk Southern railroad right-of-way totaling 1.1 miles – produced a net liquidation value report of the track structure.
- **The New York State Senate Task Force on High Speed Rail** Developed net liquidation value of CSX rail assets between Poughkeepsie, Rensselaer and Schenectady, New York Physically inspect entire corridor. Developed maintenance cost estimates of the corridor including the swing span, Livingston Avenue Bridge. Supported the initiation and advancing of activities related to the potential acquisition of CSX right-of-way between Poughkeepsie and the Capital District. The subject corridor is 85 miles in length, hosting thirteen daily roundtrip Amtrak Empire service trains between New York City and Rensselaer, New York.
- **PYCO Industries** Conducted an on-site, physical inspection of select South Plains Switching, Ltd. Co. (SAW) tracks in support of PYCO's feeder line application to acquire certain SAW rail lines under three alternative, rail asset scenarios. Determined rehabilitation needs of track structure along with the costs to cure same and provided annualized maintenance costs to keep SAW track structure in a steady state of repair, post-rehabilitation. Provided written testimony in three Verified Statements concerning rehabilitation costs necessary to return track to FRA Class 1 status and/or to upgrade it to handle 286,000 pound rail cars and provided rebuttal testimony to opinions on behalf of SAW and a competing feeder line applicant.



- ***The City of West Sacramento Redevelopment Agency*** Inventoried, physically inspected, assessed condition and estimated the net liquidation value of the track structure in a Yolo Shortline Railroad Company railroad right-of-way segment between West Sacramento and Clarksburg, CA.
- ***Lee County, FL*** In the first of two assignments, inventoried, physically inspected, assessed condition and estimated the net liquidation value of the track structure in a segment of Seminole Gulf Railway L.P. railroad right-of-way near Fort Myers, FL totaling about 1.4 miles. Then utilizing the previously generated net liquidation value report of the track structure, along with a review of other pertinent documents, provided a point-by-point rebuttal via a Verified Statement submitted to the Surface Transportation Board in support of an adverse abandonment of the subject line.
- ***Los Angeles Department of Water and Power*** Inventoried, assessed condition and estimated the desktop net liquidation value of the track structure contained within the boundaries of Cobre and McGill Junction, NV railroad right-of-way re the Nevada Northern Railway totally about 133 miles.
- ***The Transportation Agency of Monterey County*** Inventoried, physically inspected, assessed condition of and valued Union Pacific Railroad's 14-mile Monterey Branch Line between Castroville and Pacific Grove, CA, in connection with the prospective purchase of the line to facilitate recreational and public transportation uses. Net liquidation values were developed and assigned to six, separate sub-segments and the entire branch.
- ***Confidential Private Client***, Physically inspected and made net liquidation value determinations of certain CSX Transportation track assets on main and branch tracks between Boston and Worcester, Massachusetts. The 67.86 miles valued were segmented as follows: 1) between Boston and Worcester on the main track (63.36 miles) and 2) between Boston and Chelsea on the Grand Junction Branch (4.50 miles).

#### **Areas of Expertise**

- ***Track and Structure Planning, Rehabilitation, Engineering and Maintenance*** Planned, scheduled and supervised numerous, large track projects such as tie renewals, rail installation, track resurfacing, shoulder cleaning and undercutting operations, structure upgrading and grade/sub-grade stabilization. Supervised numerous bridge and culvert rehabilitation projects including complete renewals, extensive tunnel repairs and tunnel portal reconfigurations. Was responsible for creating capital and operating budgets and working within them. Managed tasks at all levels of engineering responsibility including third party contract work on many projects. Has extensive experience in emergency response and repair.
- ***Design*** Participated in the redesign of the track layout in Sandusky, Ohio yard to streamline operations and the redesign of existing physical plant trackage owned by railroad customers. Responsible for the concept and design of the "Infopage" computerized asset utilization system implemented on Norfolk Southern to better utilize track and bridge components on-hand or inventoried.
- ***Construction*** Constructed tracks at Shaffer's Crossing mechanical facilities in Roanoke, Virginia.
- ***Grade Crossings and Other Safety Issues*** Grade crossing committee member on the divisions while serving as a Track Supervisor. The committees sought to eliminate redundant grade crossings, reducing exposure to collisions. Helped facilitate a training conference for 250 Norfolk Southern Eastern Region engineering supervisors addressing the effect on bridge rail alignments of excessive heat and drastic temperature changes that traditionally occur in the Summer. Presentations then were made to front-line maintenance staff.

## Gene A. Davis, P.E.

- **Operations** Experience with switching and yard operations, train performance, customer service, FRA rules, regulations and labor agreements.

### **Norfolk Southern Corporation Work Experience**

- **Track Supervisor (Lake and Pocahontas Divisions)** Territories encompassed trackage in Columbus, Delaware, Bucyrus, Bellevue and Sandusky, OH, (Lake) as well as Welch, WV and Richlands, VA (Pocahontas). Performed FRA inspections and accomplished remedial repairs to track structure via maintenance and rail gang, tie/surfacing and surfacing work. Coordinated contract service work including rail grinding and undercutting. On the Lake Division, responsible for over 110 miles including Sandusky Yard and two smaller yards. Pocahontas Division responsibilities included over 36 miles of double and triple track mainline and another 44 miles of single track mainline including Auville Yard.
- **Assistant Division Engineer-Bridges (Pocahontas Division)** Territorial responsibility covered trackage in Charleston and Bluefield, West Virginia, Norton, Virginia and Columbus and Portsmouth, Ohio. Coordinated and facilitated new construction, inspection, and maintenance of drainage structures including bridges and culverts. Coordinated remedial repairs to tunnel structures including portal upgrades. Solicited bids for repairs by contractors and performed repairs to roadway buildings, using company forces. The 1,300 miles of his territory included over 24 miles of various bridge types, 8,000 culverts of varying construction types, 20 miles of tunnels and 16 miles of slide fences.
- **Bridge and Building Supervisor (Georgia Division)** Territory spanned 500 miles including Savannah, Augusta and Macon, Georgia. Performed inspections, supervised maintenance repairs and new construction by company forces of drainage structures including bridges and culverts.
- **Assistant Track Supervisor (Pocahontas and Virginia Divisions)** Territory on the Pocahontas Division encompassed trackage in Bluefield and Welch, West Virginia. Virginia Division responsibilities included trackage in Norfolk, Virginia. Performed FRA inspections and remedial repairs to track structures. Assisted in coordinating program maintenance work and contract service work on the track structure. Mr. Davis was responsible for 34 miles of double and triple track on the mainline as well as Bluefield Yard on the Pocahontas Division. Virginia Division responsibilities included 7 miles of double track mainline and also the company's key export coal terminal at Lamberts Point Yard and Portlock Yard in Norfolk Terminal.
- **Management Trainee (Virginia Division)** Territory encompassed trackage in Roanoke and Norfolk, Virginia and Bristol, Tennessee. Learned all aspects of track maintenance across the entire Virginia Division through hands-on experience while receiving basic exposure to the supervision of inspection and repair to the track structure.

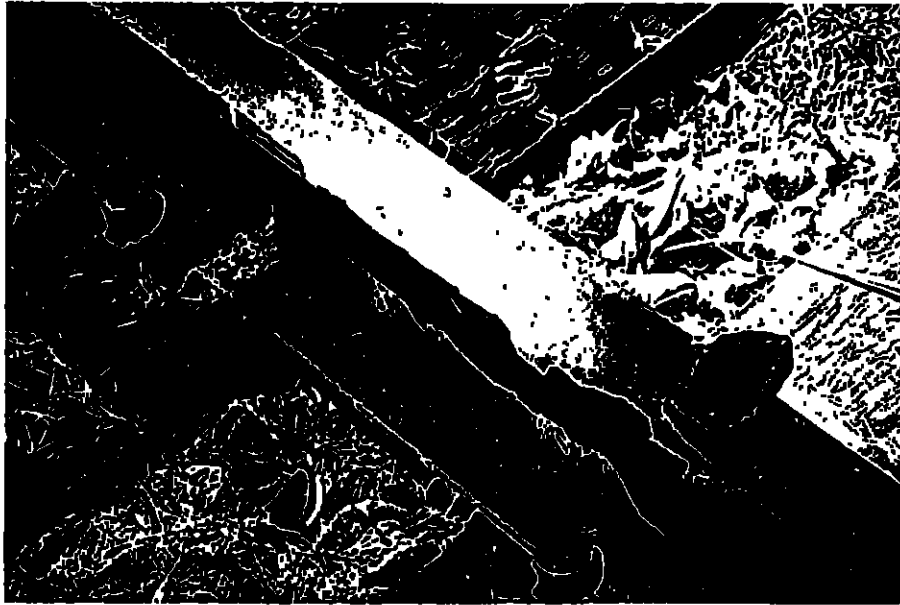
### **Turner Engineering**

- **Resident Engineer** Mr. Davis was the on-site resident engineer of a railroad bridge reconstruction near Cordova, Alabama. He ensured the plans and specifications of Turner Engineering were adhered to during field operations of the bridge reconstruction. Mr. Davis acted as a liaison between the railroad and the contractor who performed the bridge reconstruction.

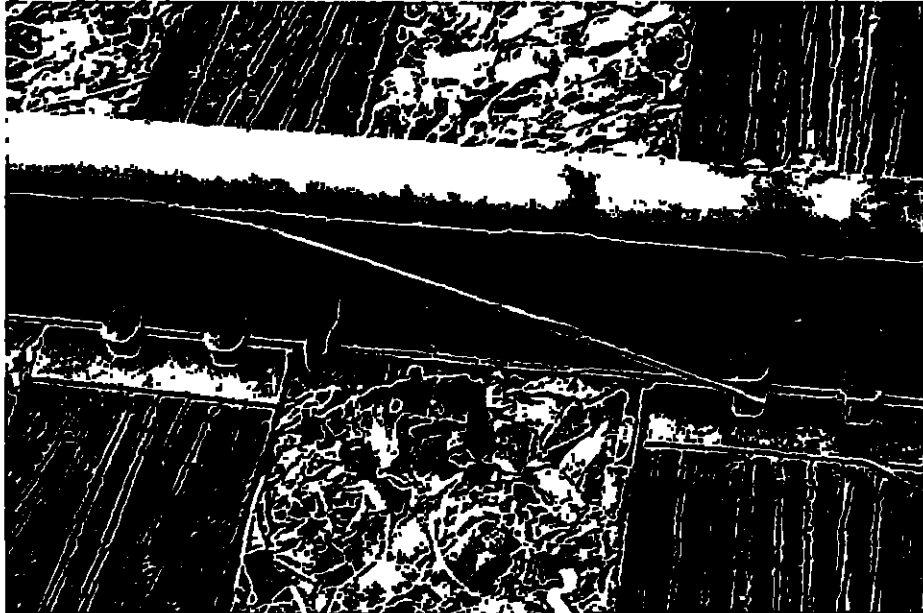
### **Presentation**

Co-presenter with Charles H. Banks, "Refined Products Storage and Transportation", October 2006.

## Photo Log



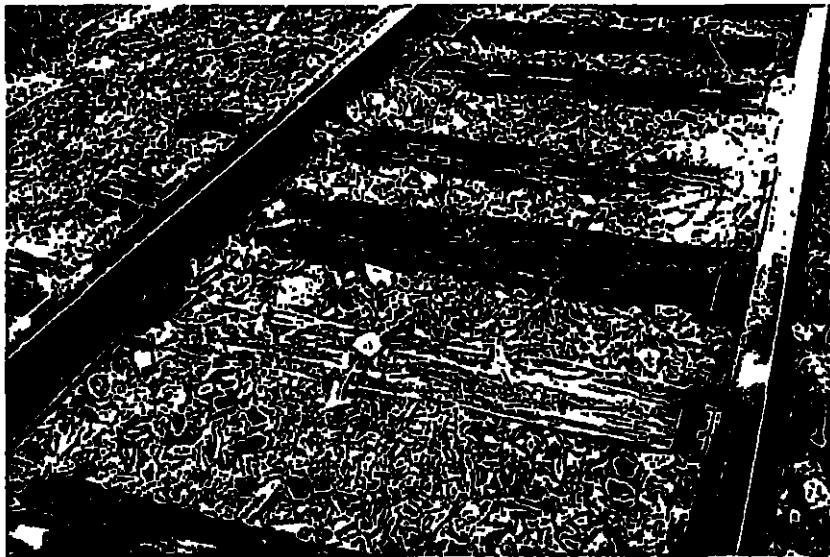
Flattened rail head



Worn rail



Typical poor tie condition



Typical poor tie condition



**Inadequately gated portal at Tunnel 18**



**Hazardous open end of approach span**



Peeling paint



Peeling Paint

**2**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

---

**REPLY VERIFIED STATEMENT OF JAY J. DEVOE**

**Exhibit 2**



## VERIFIED STATEMENT OF JAY J. DeVOE

**I am licensed as a Certified General Real Estate Appraiser by the States of Oregon and Washington. I have been qualified as an expert witness in the States of Oregon and Colorado. I am licensed as a real estate broker in the State of Oregon. I**

hold the highest professional designations awarded by the Appraisal Institute (MAI) and the International Right-of-way Association (SR/WA). As such, I am well qualified to provide the comments and information presented in this Verified Statement.

The following provides an outline of the purpose and organization of this Verified Statement:

- Part I – Presentation and summary of my Appraisal Review pertaining to the RMI Midwest appraisal of the subject property**
- Part II – Rebuttal to “Verified Statement of Todd N. Cecil” (executed on August 22, 2008)**
- Part III – Rebuttal to “Verified Statement of Charles W. Rex III” (executed on August 28, 2008)**
- Part IV – Comments on Size and Title Information Provided by CORP**

The following is a list of attachments to this Verified Statement that contain data supporting various reference data.

- Attachment 1 – Qualifications of Appraiser**
- Attachment 2 – Appraisal Review Report regarding RMI Midwest appraisal of subject property**
- Attachment 3 – Email from Brian Issa (Community Services Director, City of Veneta) regarding severely limited use potential for Subject due to Greenway Overlay Zone**
- Attachment 4 – Article supporting no value conclusion for Veneta Greenway Overlay zoning areas**
- Attachment 5 – “Base Homesite Theory” Oriented Article by Chet Boddy**
- Attachment 6 – Letters from abutting timberland owners supporting my related value conclusions**

#### **I. Review of RMI Midwest appraisal regarding subject property**

I performed an Appraisal Review of the RMI Midwest appraisal dated August 26, 2008, entitled “Net Liquidation Value of the Feeder Line Application of the Coos Bay

Line in Lane, Douglas, and Coos Counties, Oregon". This Appraisal Review was prepared at the request of the Oregon International Port of Coos Bay (OIPCB). The entirety of my Appraisal Review report is provided along with this Verified Statement as Attachment 2.

In summary, my review of this appraisal was conducted in an independent and unbiased manner, intended to have no reflection on a prior appraisal assignment I conducted regarding the subject property. I have considered the RMI appraisal completely on its own merits, which is proper appraisal protocol that leads to an easily understood and credible review. In contrast, CORP Witness Rex has reviewed my June 6, 2008 appraisal in relation to his appraisal that is inherently not comparable (based on different data and incorrect methodology) and, for the purposes of the comparisons made, it had not been independently established as reliable or credible; thus, the Appraisal Review provided by Mr. Rex is confusing, misleading, inappropriate, and unprofessional, as I have explained in Part III of this Verified Statement.

As explained in my appraisal review report, the scope of analysis for my Appraisal Review consisted of reading the RMI appraisal report; formulating opinions regarding reasonableness of Witness Rex's appraisal methodology, data, analysis, and conclusions; formulating opinions about conformance to governing professional standards (i.e. USPAP); spot-checking of mathematical calculations; and verification and analysis of certain suspect data provided by the appraiser

As a summary overview of my Appraisal Review findings and conclusions, the Appraisal submitted by Witness Rex is based on incorrect appraisal methodology,

often relies on irrelevant market data, and it does not appear to be compliant with USPAP in several significant ways.

In some cases there appears to be no sound or adequate logic being employed by the appraiser in his valuation, whereas in several instances the appraiser's value conclusions are based on sales involving properties with entirely different land use potential (see Land Use categories 7, 14, 22, 25, 28 & 29). In one instance this is compounded because the appraiser's value conclusion is not within the range of price per acre indications established by the sales cited. In other cases no individual market sales or other compelling data are provided as support for the conclusions reached.

**A. Completeness of material under review**

The appraisal under review was found to be incomplete or insufficient in regards to many important elements, which include the following:

1. Reporting of key subject property data and analysis was insufficient or non-existent.
2. The appraiser has included the value of timber rights that are owned by another entity.
3. Reporting of sales data and analysis was insufficient or not provided.
4. Incorrect value conclusions were utilized by the appraiser in his calculation of net liquidation value (refer to Land Use 33 for one example noted).

**B. Appropriateness of appraisal methods and techniques Used**

The appraisal has been based on incorrect appraisal methodology, as I have explained and exemplified later in this review appraisal report.

**C. Apparent adequacy and relevance of the data and adjustments to the data**

1. In many instances it is apparent that the appraiser's market data is not relevant to the subject ATF properties. In other instances is often not

apparent if the data is adequate because insufficient information and analysis is provided.

2. The few adjustments made to the market data have not been supported. In other instances the appraiser's comments and other data indicators suggesting that adjustments are called for (i.e. market conditions, improvements, etc.) but no adjustments were made.

**D. Opinion of appraiser's analysis, opinions, and conclusions**

My final overall opinion of the appraisal under review is that it is not credible. Because of the multitude of significant errors, inconsistencies, and USPAP conflicts, as explained below, Mr. Rex's appraisal cannot be considered a reliable appraisal. Simply put, the subject appraisal and the work-product do not approach the standards of professionalism and accuracy that would be expected of a licensed appraiser and especially one with Mr. Rex's experience and credentials.

**II. Rebuttal to "Verified Statement of Todd N. Cecil"**

CORP witness Cecil has tried to discredit my appraisal analysis in several different regards and all of these are considered to be baseless or patently incorrect, as my following analysis will explain. His testimony claims to show that my judgment is "...unsupported by his analysis or by real world experience", but my testimony herein will show that his criticism is unfounded. Witness Cecil's assertion that the SPT rights do not prohibit development is absurd, and his rejection of my value discount is illogical and not supported by his provided data.

**A. Timber Rights**

As an initial matter, Witness Cecil claims that my appraisal is flawed for "application of any discount to timbered property in Douglas County based upon the reservation of timber rights in the original deed from SPT to Corp." However, Witness Cecil relies on a misrepresentation that "CORP subsequently re-acquired those timber

rights"; the deed he has provided as Cecil Attachment 1 clearly indicates and establishes that RailTex Logistics, Inc. (and not CORP, as stated by Mr. Cecil) is the entity that acquired the timber rights in question (this is a very important distinction). CORP and RailTex may be owned by the same company but that is a very different situation than the title ownership being the same. My judgment is informed by past appraisal assignments where I have been instructed by the Oregon Department of Justice that it is proper to conclude that such differences in title establishes that unity of title/ownership does not exist in regards to determining Legal Larger Parcel (a consideration important for determining just compensation in cases of eminent domain acquisitions). The Department's position—based on the "Yellow Book" (Uniform Appraisal Standards for Federal Land Acquisitions)—reflects the belief that there are beneficial reasons for entities to separate ownerships (i.e. taxes) so it is unreasonable or inequitable for related but different ownerships to claim unity elsewhere when it suits their interest.

My appraisal is certainly correct in the matter of the timber rights in Douglas County, as well as Lane and Coos Counties. I have appraised the Encumbered Fee Simple Interest of the land constituting the subject property as it is owned by CORP. In these proceedings the OIPCB is not addressing superfluous property owned by RailTex. My position is further supported by the fact that the timber rights in question are a distinct marketable asset that is not required for the rail line. This is evidenced by 12.25 acres of timber rights sold by RailTex Logistics, Inc. as described by Witness Rex as Footnote 2 on page 28 of his Feeder Appraisal.

**B. SPT Easement for Pipeline or Communication**

On Page 4, Mr. Cecil claims that the SPT rights do not prohibit development within the communications facilities or pipelines easement "...because there are not—and there have never been—any other 'existing' or 'planned' SPT pipeline or communication facilities elsewhere in the Coos Bay Line subdivision. ..." This conclusion is contrary to my experience, and I believe that it defies common sense. The reservation language (provided on Page 10 of my June 6, 2008, appraisal) establishes that the pipeline or communication facility reservation is a perpetual easement, and furthermore the right is reserved for successors. These aspects exemplify that the restriction is not extinguished by any lack of use or planned use. Furthermore, the reservation including the communication and pipeline easement does not preclude future planning to use the easement, and therefore the assertions made by Mr. Cecil are unfounded. In summary, his conclusion that the pipeline/communications facilities easement is buildable and, more importantly, that the market would consider it buildable, is incorrect.

The assertion that no discount for the SPT rights reservations/easement runs counter to experience and the attitudes of typical, knowledgeable market participants. Market data and basic logic support that an unencumbered property will sell for more than a property that is similar but for the exception of reservations such as those held by SPT. However, this does not go directly to the matter at hand, because the subject property does not constitute an independent site but a heavily encumbered strip of excess railroad right-of-way with a highest and best use generally consistent with assemblage with abutting properties. This distinction is important because it highlights

the subject property's value dependence on abutting properties in terms of potential utility and demand (limited pool of buyers).

Witness Cecil's attempt to discredit my analysis of the Swanson Brothers Lumber Company sale is also unfounded. He claims (at page 4) that "SPT's reserved rights played no role whatsoever in setting the purchase price for the Swanson sale—indeed, those rights were irrelevant to the purchaser." The data provided by Witness Cecil simply does establish this point. It is a dubious assertion that a knowledgeable buyer would not consider an easement precluding development in setting a purchase price; most likely, the buyer (a) did not know of the easement, (b) reflected the easement in the price paid, or (c) was excessively motivated to acquire the property for the special benefits obtained by the assemblage. The latter theory may hold most relevance, whereas on Page 5 Witness Cecil states, "Thus, Swanson agreed to pay more than 150 percent of the appraisal value for this property." (It is noted that Swanson approached CORP to express interest in buying the land.)

Witness Cecil references an appraisal by Charles P. Thompson & Associates, Inc. ("Thompson") (see Page 5) as being the foundation of negotiations for the Swanson purchase. Indeed, he invokes this appraisal (which reached a value below the sale price) as discrediting my 50-percent discount from fair market value as a result of the rights reserved by SPT. Conversely, my analysis of the appraisal and other Swanson purchase data provided by Witness Cecil indicates that my estimated 50-percent discount may not be high enough. The Thompson appraisal estimates the market value of the subject land in fee simple title (indicated at top of Page 5, Attachment 2). For purposes of the appraisal, "Fee Simple" is defined on the next page as "...a fee without



limitations to any particular class of heirs or restrictions, but subject to the limitations of eminent domain, escheat, police power, and taxation." Thus, the Thompson appraisal does not address or acknowledge the SPT reservation of rights, and therefore does not reflect these rights its value conclusion. Absent this key consideration, the appraisal is not a reasonable source of support as purported by Witness Cecil.

Thus, it appears that Swanson lacked crucial knowledge of the reservations in its negotiations with CORP. Most importantly, the fact that Swanson was willing to pay more than 150 percent of appraised value for this property indicated that Swanson had excess motivation for the acquisition, and thus this transaction was not reflective of market value. As part of my original appraisal analysis I attempted to confirm the details of this transaction with Swanson but was told they do not share such information, and therefore I had no knowledge that they had paid more than market value. If I had known of these circumstances at the time of my appraisal, I may have viewed this as support for a discount greater than 50 percent from fair market value to account for the rights reserved by SPT.

Finally, in regard to the Swanson property, it was insinuated that I considered the timber reservation held by SPT to have an impact on the Swanson property. I understand that the timber reservation has no impact on the Swanson property because it is an industrial property, and I made no such assertion or consideration to the contrary in my appraisal analysis.

### **C. Appropriateness of Discounts Relative to ATF Values**

Witness Cecil states (at page 6) that "CORP has consistently sold such lands at prices at or above 'across-the-fence' value." However, this assertion and his alleged

market evidence do not stem from an independent third party appraiser, but from his own viewpoint as an employee of Rail America, Inc. Witness Cecil provides examples of properties CORP has sold in Reedsport, Cottage Grove, Veneta, and several other locations listed in his Table 1 (see Page 8). He claims that these "CORP land sales along railroad right-of-way" demonstrate that my discount from ATF value is inappropriate, but all he offers as proof is his opinion or statement that the sale prices obtained were considered the prevailing market of the property and did not reflect any discount on account of the rights reserved by SPT. He has provided no market data supporting this assertion; typically, the market data presented by Witness Cecil would be compared with the sales of properties similar in all regards (location, sale data, zoning, size, access, etc.) except for the rights reserved by SPT. Such a comparison might provide support for his claims, but his internal data does not present any meaningful support.

Also, there are obvious flaws in Mr. Cecil's use of internal RailAmerica, Inc. memoranda to establish the "market" aspect of various sales (Attachments 3 and 4 of his Verified Statement). In these memos, he states that the negotiated sale prices are "...deemed to consistent [sic] with prevailing land values" in the surrounding area. These memos do not provide any proof that there is no discounted value for the SPT rights reservations, whereas he is simply stating his unsupported opinion that the price is consistent with prevailing land values. Furthermore, the sale prices offered by Witness Cecil as some sort of proof can be consistent with prevailing land values while at the same time reflecting a discounted value for the SPT rights reservation; these are not mutually exclusive characteristics.

In regard to Veneta, Witness Cecil provides data, analysis, and opinions that are wrong. His two examples of CORP property sold to K. Larson and Larry Larson prove none of the things that he claims. Again, he has failed to provide any other market data as a control element that might establish that no discount is reflected for rights reserved by SPT, which should be basic protocol for an experienced appraiser or any other credible comparison. The RMI Midwest appraisal ordered by Mr. Cecil shows that a discounted value was paid by the Larson's for these parcels; reference is made to "Figure 20. Veneta Commercial Sales (Land Use 35) found on page 25 of the RMI Midwest appraisal provided by CORP Witness Rex as Attachment 1, which I present a copy of below. This indicates that the three CORP sales sold at discounts over 60% relative to the three sales not involving former CORP property. The value discount must be associated with the SPT reservations/easement because the other likely factor, the City's Greenway Overlay zone relevant to the properties, was not enacted until 2006 (after the CORP sales) as explained after the presentation of Rex Figure 20.

#### **D. Veneta Greenway Zoning Overlay**

Witness Cecil has claimed that "Veneta's 'Greenway' zoning regulations clearly did not render the property worthless", but I offer the following data that directly

contradicts his opinion. Brian Issa, the Community Services Director for the City of Veneta, has stated that the designated Greenway generally does not allow development and in the case of the subject rail line the Greenway is intended to provide for an open space corridor that can be used for bike/pedestrian paths; reference is made to his supporting email provided as Attachment 3. Further proof is provided an article from the April 19, 2008 issue of The Register-Guard (a Eugene, Oregon based newspaper; refer to Attachment 4). The article titled "Veneta Battling Claim of 'Inverse Condemnation'" states that the Greenway Overlay zoning was adopted in Year 2006 and most pertinently states the following: "Veneta – Officials here are preparing to go to court to defend the city against a \$3.6 million lawsuit filed by landowners who claim that Veneta's classification of their commercial property as a greenway "subzone" makes it undevelopable." The property owners that filed the suit in May 2008 are none other than Kay and Larry Larsen, the buyers of CORP's property, as listed in Figure 20 (reproduced above).

#### **E. Summary of Conclusions Regarding Witness Cecil's Comments**

In conclusion, CORP Witness Cecil's comments and analysis are not reasonable or credible for the many reasons outlined above. The following summarizes the key issues and my findings:

1. CORP does not own the timber rights to Douglas County as claimed, and my appraisal of the subject property accurately considered the issues of timber rights and value.
2. No market data has been provided to establish whether or not the provided CORP sales data reflects a discount for the SPT rights reservations.

3. The assertion that the CORP sales are consistent with prevailing land values is misleading, because market-based prices by definition reflect any encumbrances (market price and encumbrances are not mutually exclusive);
4. My conclusion that no value is appropriate for the portions of the subject zoned Greenway by the City of Veneta is supported as being correct within the context of net liquidation value.

### **III. Rebuttal to “Verified Statement of Charles W. Rex III”**

CORP Witness Rex has provided the STB with a baseless, incorrect, misleading, and/or unprofessional critique of my appraisal work, as the following portion of my Verified Statement will establish. My responses are organized as follows:

- A. Categorical denial of accusation of unethical action
- B. Summary of responses to other attacks by Witness Rex
- C. Detail/support refuting critiques by Witness Rex

#### **A. Categorical Denial of Accusation of Unethical Action**

I feel it is best to immediately reject the most specious claim made by Witness Rex on Page 25 (item C.3.); he states in bold letters, **“Witness DeVoe misclassifies subject land as ‘Forest Nominal’ in order to minimize his appraisal.”** This is a baseless attack on my personal and professional character, and therefore completely unprofessional and unacceptable. I take this unfounded allegation very seriously, because I have always worked hard to maintain my professional integrity, which is the foundation of all I do as a professional appraiser. In my nearly 20 years of appraising this is the first time that I have ever been accused of acting unethically or otherwise acting improperly, and it is particularly disturbing because absolutely no proof of unethical behavior is offered as support of the claim.

In my appraisal of the subject property, I have acted in an unbiased manner to present the facts as understood, and I have explained the necessary assumptions, appropriate methodology used, etc. For the development and reporting in my appraisal, I went to great lengths to provide relevant details and be transparent. I wholeheartedly believe that it is reasonably apparent to an unbiased reader that I have acted competently and diligently in the development and reporting of my appraisal. I can only surmise that Witness Rex has made this baseless accusation in order to buoy his separate appraisal analysis, which has been repeatedly commingled in his review/critique of my appraisal (which is completely inappropriate practice, as expanded on later in this Verified Statement).

The unsupported accusation by Witness Rex could not be further from the truth. I was not instructed by my client or anyone else in regard to my value conclusions, I would not have been influenced by such if it had occurred, I have no other motivation to act unethically (i.e. monetary compensation), and I continue to stand by the unbiased conclusions reached in my appraisal.

**B. Summary of Responses to Other Attacks by Witness Rex**

**1. Witness Rex has conducted a completely improper review of my appraisal.**

- (a) His review of my appraisal is done in comparison to his appraisal and this is a fundamentally flawed method because his appraisal is not independently established as being reasonable or credible (indeed I ultimately found his appraisal to be very far from credible, as explained in Part I of this Verified Statement).

- (b) His critique of my appraisal is confusing and misleading because of the comparisons made to his appraisal that rely on different and incorrect appraisal methodology and data (again refer to Part I of this Verified Statement). Instead, my appraisal should simply be reviewed on its own merits within its established context. Then, in a separate analysis, our appraisals could be more properly compared in terms of differences and relevance.
- (c) Witness Rex has made no apparent attempt to follow the Uniform Standards of Professional Appraisal Practice (USPAP) requirements. He is required to adhere to USPAP, and this is important if not mandatory to provide credible and unbiased appraisal services. The fact that USPAP has not been followed is very serious and grounds for completely dismissing his Verified Statement and for disciplinary actions by the Oregon Appraisal Certification and Licensing Board (ACLB) and the Appraisal Institute.

**2. Witness Rex has misrepresented his analysis and criticized me on issues he has handled in a similar manner (double standards have been applied, as elaborated upon later in Verified Statement).**

**3. Many of the comments made by Witness Rex are incorrect and/or are misleading.**

The following are summarized responses to the claims made by Witness Rex (details supporting my counter-claims are provided later in my Verified Statement):

- (a) I considered the status of CORP's title in detail, as explained on Pages 3, 4-8, 10-11, and 70-71 of my Appraisal Report.

- (b) I identified and relied on comparable sales, as explained and supported throughout my Appraisal Report.**
- (c) I did inspect many of the comparable sales relied upon in my appraisal analysis.**
- (d) I have applied correct valuation methodology consistently throughout my appraisal analysis, as explained and exemplified throughout my appraisal.**
- (e) The "base homesite theory" utilized is reasonable methodology supported by many established theories and market evidence.**
- (f) My conclusion that "virtually all" forested land along the subject is of no value is absolutely correct within the context of appraising the subject property's Net Liquidation Value. I have provided letters from ATF land owners stating that they would not be interested in buying the abutting subject areas at any price.**
- (g) My classifications of subject land are reasonable and accurate, and the allegations to the contrary are unfounded or misrepresented.**
- (h) My value discount relative to the property rights reserved by SPT is appropriate (as addressed previously in regard to Witness Cecil's Verified Statement).**



- (i) The statement by Witness Rex that my appraisal contains many flaws that render it unreliable is based on incorrect data, inappropriate comparison to his appraisal, and/or data and analysis taken out of context.
- (j) My assumptions in calculating net liquidation value from gross value are not unrealistic within the context of the proper net liquidation value appraisal methodology employed. Once again, Witness Rex is confusing issues by comparing my appraisal to his dissimilar, inappropriate, and non-credible appraisal.

**C. Detail/Support Refuting Critiques by Witness Rex**

**1. Witness Rex has conducted a completely improper review of my appraisal.**

- (a) The fact that his review of my appraisal is conducted in comparison to his appraisal is incorrect on a technical basis and may result in a breach of ethics. The Appraisal Institute has published The Appraisal of Real Estate, which is generally considered to be one of the preeminent textbooks for real estate appraisal. In regard to appraisal review, it states:

***“Review appraisers violate rules of fairness and objectivity when they level undue criticism against an appraisal report. If an appraisal review contains factual errors or substitutes a review appraiser’s judgment for that of the appraiser, it may result in a breach of ethics.”<sup>1</sup>***

***“The review appraiser must clearly distinguish between a difference of opinion with the appraiser who prepared the report and an objective review of the report itself. When a review appraiser makes a judgment or forms an opinion***

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<sup>1</sup> The Appraisal Institute The Appraisal of Real Estate, 12<sup>th</sup> Edition 2001 p 634

***concerning the analysis or conclusions in the appraisal, the review appraiser's conduct must conform to Standard 3 of USPAP."***<sup>2</sup>

(b) His critique of my appraisal in relation to his appraisal has resulted in confusion and misleading data, and his critique is fundamentally flawed in terms of logic.

Comparisons that are not based on a factual control element are worthless. His appraisal analysis and conclusions have not been established as being credible by an independent or unbiased third party, and therefore his appraisal is not a reasonable element of comparison in terms of my appraisal report.

(c) Witness Rex has made no apparent attempt to follow the Uniform Standards of Professional Appraisal Practice (USPAP) requirements that are prudent to follow and required by laws (Oregon Administrative Rules) for appraisers conducting appraisal services or valuation activities.

1) "A technical review is performed by an appraiser in accordance with Standard 3 of USPAP to form an opinion as to whether the analysis, opinions, and conclusions in the report under review are appropriate and reasonable."<sup>3</sup>

2) Witness Rex's comments regarding my appraisal qualify as a technical review and as real estate appraisal activity, and therefore his analyses of my appraisal are required to be conducted in accordance with USPAP Standard 3 (Appraisal Review, Development and Reporting).

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<sup>2</sup> The Appraisal Institute. The Appraisal of Real Estate, 12<sup>th</sup> Edition 2001 p 636

<sup>3</sup> The Appraisal Institute The Appraisal of Real Estate, 12<sup>th</sup> Edition 2001 p 635

- 3) The Verified Statement provided by Witness Rex appears to clearly be in violation of Oregon Administrative Rule 161-025-0060 that regards appraisal standards and USPAP.

OAR 161-025-0060 (6) states:

**"All licensees testifying or presenting evidence in an administrative or judicial proceeding, must base their testimony or evidence only upon a written summary or self-contained appraisal report in compliance with USPAP, reflecting a report date that precedes the date of testimony, unless such testimony is being compelled by legal subpoena."**

OAR 161-025-0060 (9) states:

**"All licensees must comply with USPAP in all valuation activity, unless such valuation activity qualifies as an exclusion to real estate activity under ORS 674.100(2)(h)."**

- 4) USPAP is defined as:

**"Current standards of the appraisal profession, developed for appraisers and the users of appraisal services by the Appraisal Standards Board of The Appraisal Foundation. USPAP sets forth the procedures to be followed in developing an appraisal, analysis, or opinion in the manner in which an appraisal, analysis, or opinion is communicated. The standards are endorsed by The Appraisal Institute and other professional appraisal organizations."<sup>4</sup>**

- 5) The Preamble of USPAP explains the purpose of USPAP as being: **"...to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraiser. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading."<sup>5</sup>**

The USPAP Preamble goes on to state, "Compliance with USPAP is required when either the service or the appraiser is obligated to comply

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<sup>4</sup> The Appraisal Institute The Appraisal of Real Estate, 12<sup>th</sup> Edition 2001 p 16

<sup>5</sup> USPAP 2008-2009 Edition, The Appraisal Foundation, p U-6

by law or regulation, or by agreement with the client or intended users."<sup>6</sup>

6) By not adhering to USPAP with his review of my appraisal, Witness Rex has provided a confusing, misleading, and non-credible analysis of my appraisal.

7) The fact that USPAP has not been followed is grounds for the STB to completely disregard the many portions of the Rex Verified Statement that address my appraisal.

**2. Witness Rex has misrepresented his analysis and criticized me on issues he has handled in a similar manner (double standards have been unjustly applied).**

(a) Regarding the inspection of comparable sales, I clearly explained the level and reasonableness of my extent of inspection for the comparable sales relied upon in my analysis. Witness Rex claims that my level of inspection for the comparables is insufficient (a claim I will dispute in detail later), yet in his appraisal he also has not inspected every comparable sale.

1) On Page 9 of his Verified Statement, Witness Rex states that he or his associate "...physically inspected virtually every comparable sale that was accessible". On Page 2 of his August 26, 2008, appraisal (see Rex Attachment 1), he states, "...all accessible sales were inspected".

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<sup>6</sup> USPAP 2008-2009 Edition, The Appraisal Foundation, p. U-6

At best, these statements are ambiguous and turn on his definition of "accessible."

- 2) It is apparent that my level of inspection for the comparable sales is similar to that of Witness Rex, and in his Verified Statement Witness Rex has presented his analysis in contradictory and misleading manners.

(b) Witness Rex has unfairly criticized my appraisal for not including comparable sales from any communities through which the subject property extends.

- 1) At pages 69-71, my appraisal analysis succinctly explains the rationale for not relying on comparable sales found in each community through which the subject property passes. This is completely appropriate, and I wholeheartedly stand behind my appraisal in this regard.

- 2) Witness Rex has not cited any sales data for much of his appraisal analysis, and in other instances has relied on inappropriate or incorrect sales data (refer to examples provided in my appraisal review which is Attachment 2 to this Verified Statement).

- 3) Witness Rex has provided misleading and contradictory analysis of my appraisal, while employing double standards.

(c) Another example of Witness Rex employing a double standard is in regard to his criticizing my appraisal for concluding that a zero value is applicable to portions of the subject line. I have detailed the analysis behind and

rationale for my zero value conclusions, and Witness Rex has repeatedly tried to discredit these conclusions as being unfounded in various unprofessional or incorrect manners. Nonetheless, he has also concluded that significant portions of the subject property have no value. His consideration of such was done in a different manner, consistent with the incorrect appraisal methodology he has employed.

It is not proper to directly compare our considerations of no value conclusion, because we have approached the appraisal methodology differently. The point is both of our appraisals recognize that significant portions of the subject property have no value within the context of the net liquidation value. Reference is made to Page 39 of Witness Rex's August 26, 2008, appraisal. He has weakly estimated that 15 percent of the subject line is essentially worthless, and this reportedly considers that 75 percent of the industrial property will not sell, 25 percent of the residential and rural residential parcels will not sell, and 10 percent of the commercial and acreage parcels will not sell.

**3. My appraisal has considered the status of CORP's title in detail.**

- (a) The accusation that I did not consider title is misrepresented and completely incorrect. His quote of my assumption in consideration of title is simply wrong (a misquote), I assumed that the "encumbered" fee simple title of the subject land was owned by CORP and not the "unencumbered" fee simple title, as indicated by Witness Rex. This is an important distinction, because as misquoted by Witness Rex it indicates that I did

not consider the status of CORP's title in regards to encumbrances, when in fact this could not be further from the truth.

**(b) My appraisal analysis certainly considered CORP's title in detail.**

Referring to my appraisal, on Page 3, I have addressed the property rights appraised; on Page 4-7 I have described the assignment conditions and extraordinary assumptions that include aspects of title; on Page 7, I have described the legal description relied upon; on Page 8, I have described ownership title (current and historical); and on Page 10, I have described encumbrances on the title of the subject property. Furthermore, I considered the nuances of the subject title throughout my appraisal analysis, which results in credible appraisal conclusions.

**(c) The data relied upon by my appraisal analysis does differ from that provided by CORP Witnesses Rex and Chapman. I will address these differences later in this Verified Statement (see Section IV).**

**4. My appraisal has identified and relied on relevant comparable sales.**

**(a) The insinuation that I have relied on insufficient comparable sales is a misrepresentation and taken out of the context of my appraisal.**

Reference is made to my appraisal, which has clearly explained the relevance of the comparable sales utilized.

**(b) The fact that I do not include comparable sales for every community through which the subject extends is accurate and appropriate considering the net liquidation value being estimated in conjunction with the**

encumbered nature of the subject. The justification for this has been detailed in my appraisal.

- (c) This is an example of Witness Rex applying a double standard in his critique of my appraisal, whereas there are many examples where Witness Rex simply relied on no relevant market data in the course of his August 26, 2008, appraisal (reference is made to my Attachment 2, which consists of my review of Witness Rex's appraisal).
- (d) In order to suggest that my analysis is wrong or incomplete, Witness Rex is comparing his incorrect operating corridor oriented ATF valuation methodology to my net liquidation methodology. The fact that he identified numerous comparable sales in the communities through which the subject line extends is not indicative that they are comparable for the valuation at hand or that there is sufficient data to provide a basis for matched-pair analysis.
- (e) The remarks by Witness Rex about location are a gross misrepresentation that I have not considered the most basic of real estate valuation tenets. I certainly have considered location in the valuation of the subject property and my selection of comparable sales, and I steadfastly stand by my judgment that comparable sales from every community through which the subject extends was not required or appropriate because of the net liquidation nature of the assignment and the significant encumbrances of the subject property.



**5. I inspected my comparable sales where possible and meaningful data could be gleaned.**

- (a) The comments made by Witness Rex are misleading in the sense that they indicate a general failure to inspect properties relied upon as comparable sales. In the course of my appraisal analysis, I inspected numerous comparable sales, as well as numerous other sales that were ultimately deemed to be unworthy as comparables.
- (b) I stand by my rationale (not an "excuse") for not viewing inaccessible properties (i.e. located along a private road) or where insufficient meaningful data can be gained from a roadside inspection. The latter typically applies to timber properties, where from available roadways the bulk of what is visible is a bank of trees or other vegetation that obscure the overall nature of vegetation and topography; in light of this fact, I diligently relied on topographic maps, aerial photographs, and/or data confirmation with parties involved. I find it absolutely amazing that this makes no sense to Witness Rex and it is very unlikely that from roadside inspection he was able to glean sufficient data about his extremely large acreage comparables (4 contain 3,300-6,100 acres; 1 contains 17,045 acres; and 1 contains 24,324 acres).
- (c) The criticism about the inspection of comparables is grossly unfounded. For the appraisal of rural properties it is common for road side viewing to be not feasible because access is blocked by locked private gates and/or

trespassing is considered a serious offense in the eyes of property owners.

- (d) It is interesting that Witness Rex mentions that a physical inspection of comparable sales is necessary to find out whether improvements are on the property, because in my spot checking of comparable sales cited in his August 26, 2008, appraisal, I noted several examples where improvements were included on the sale property and no mention or adjustment regarding such was made in the analysis by Witness Rex.

One example is the only sale (Sale 2007-066252) that he relied on for his valuation of Land Unit 5 (Swisshome Residential). This sale occurred in September 2007, and Mr. Rex indicates the property contained 6.78 acres to reflect a price of                      per acre. However, the sale information used by the appraiser is wrong. Lane County and RMLS records show the property contained 7.05 acres, and therefore a price of                      per acre is indicated. Furthermore the property was improved with a single-family home and is accessed from a gravel cul-de-sac, none of which appears to have been considered by the appraiser.

- (e) On Page 9 of his Verified Statement, Witness Rex stated that either he or his associate "...physically inspected virtually every comparable sale that was accessible. ..." On Page 2 of his August 26, 2008, appraisal; in the second paragraph under Scope of Work, he states, "...and all accessible sales were inspected. ..." These statements are at best ambiguous and

give no indication of how many sales were actually inspected by Mr. Rex and/or his associate.

- (f) The criticism about the inspection of comparables is a gross misrepresentation and an application of a double standard, whereas neither Witness Rex nor myself were able to inspect all of the comparable sales relied upon.

**6. The accusation that I have failed to apply consistent valuation methodology is incorrect.**

- (a) In my appraisal I have provided a detailed discussion of the valuation methodology, and I have followed it in a systematic approach to ensure consistency. I provided significant detail in my appraisal so that it would be apparent that such important matters have been conducted completely and properly. I refer to pages 69-71 of my appraisal.
- (b) The point Witness Rex seems to be making is that my valuation methodology is inconsistent with his, which is appropriate, since I have accurately followed the steps for estimating net liquidation value as opposed to using appraisal methodology oriented towards a functioning or viable railroad corridor. Reference is made to my June 6, 2008 Appraisal and my Appraisal Review of the RMI appraisal that is Attachment 2 to this Verified Statement.
- (c) My appraisal statement that "the best starting point for estimating the subject's base value is the across-the-fence (ATF) value" was not professing agreement with Witness Rex as he has indicated; this is an

unfounded mischaracterization of the intent of my analysis. I have appropriately considered ATF value as the starting point of the proper net liquidation value approach and methodology as established by the United States Department of Transportation in its manual titled Real Estate Appraisal of Abandoned Railroad Rights-of-Way. For more details, reference is made to my appraisal review of the RMI appraisal that is Attachment 2 to this Verified Statement.

**7. Support that my use of the “Base Homesite Theory” is appropriate:**

- (a) “Base homesite theory” is the name applied to the very real and common market characteristics in which larger homesites reflect lower prices per square-foot or acre than smaller ones that are otherwise similar. A larger residential lot is typically more desirable and worth more on a price per lot than a similar but smaller site; this is recognized in a fundamental part of what I characterize the base homesite theory.
- (b) Witness Rex is misconstruing my analysis that correctly recognizes that larger homesites typically sell for more than smaller, similar lots but reflect lower prices on a per-square-foot or per-acre basis.
- (c) I find it absolutely amazing that Witness Rex cannot comprehend the appropriateness of this analysis, considering his apparent pedigree of appraisal experience. What I have characterized as the base homesite theory is consistent with the economies of scale principle, it considers the essential relationship between site utility and value, and it can also be considered consistent with the zones of value theory.

- (d) In my explanations of base homesite theory the reference to "excess" land could be more accurately referred to as "surplus land".

Surplus land is described as: "Land not necessary to support the highest and best use of the existing improvements but, because of physical limitations, building placement, or neighborhood norms, cannot be sold off separately. Such land may or may not contribute positively to value and may or may not accommodate future expansion of an existing or anticipated improvement."<sup>7</sup>

Implicit in the definition of surplus land is that it may contribute value at a different rate than the improved portion of the property, which is a factor forming the basis of the base homesite theory that I relied upon.

- (e) Attachment 5 contains an article consistent with the premises relied upon in my appraisal and described as the base homesite theory. This article by Chet Boddy, a real estate appraiser and broker in California, includes the following:

*"If you own a house on 40 acres, most banks will base your residential loan on the house and the surrounding 5 acres and will disregard the remaining 35 acres. The 5-acre portion is called the 'land and use.' The 35-acre portion is called 'excess land.' ... Excess land is unused land which is not needed to serve or support the primary highest and best use. It can be dividable or undividable, and can even have its own separate highest and best use, such as agriculture or timber production."<sup>8</sup>*

- (f) The Coos County rural residential sales data provided by Witness Rex is completely useless as presented and, as such, it is a misrepresentation of

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<sup>7</sup> The Appraisal Institute The Appraisal of Real Estate, 12<sup>th</sup> Edition 2001 p 198

<sup>8</sup> Chet Boddy, "Excess Land" (part of monthly column, "Back to the Land"), Mendocino Coast Real Estate Magazine, Copyright © 2002, Presented at [www.chetboddy.com/pages/excessland.html](http://www.chetboddy.com/pages/excessland.html)

proof that the base homesite theory lacks validity. The comparable sales lack the necessary similarities required to prove the point purported to be being made. The properties have different sale dates; there is no mention or comparison of amenities (i.e. utilities, roads, view); and their location of "Coos County" is entirely too broad. Prior in his Verified Statement, Witness Rex highlighted the importance of location in considering comparable market data, yet he has failed to adequately consider location in his analysis.

- (g) Table 2 presented on Page 15 of Mr. Rex's Verified Statement does not debunk my base homesite theory usage. Clearly, the smaller properties have sold at higher prices per acre than the larger properties. There is insufficient data such as location, topography, utilities, and amenities to judge if there are any reasonable matched pairs that soundly support or refute my base homesite theory or the claims of Witness Rex.
- (h) There are many misleading statements or blatant mischaracterizations of data provided by Witness Rex in his criticism of my base homesite theory considerations. For example, on Page 19 he states that the "properties in Swisshome and Deadwood were the only 'matched pairs' of comparable sales." I did not say these were the only matched pairs, but the most relevant found during my investigation. Furthermore, he states that these were four dissimilar properties, but he provides no proof or indication how my use of these sales as a matched pair was incorrect or unreasonable.

- (i) In a misleading manner, Witness Rex is improperly comparing homesite values (that I recognized do vary between communities) to the values associated with excess or surplus property area (that is significantly less volatile between communities). His presented analysis does not properly or adequately show that "per-acre value of residential land varies widely from community to community".

**8. My conclusions regarding forest land value are correct.**

- (a) Witness Rex has misrepresented my appraisal with his statement,

"Witness DeVoe's conclusion that virtually all forested land along the feeder line segment is 'worthless' is patently incorrect "

- 1) I certainly have not contended that all forest land along the feeder line segment is worthless. I have provided comparable sales data that supports that ATF timberland is not worthless.
- 2) Witness Rex is confusing the issue of what is being appraised. I have not appraised the ATF lands, but considered their value as a starting point in estimating the net liquidation value of the subject property, which has been established as appropriate.

- (b) Witness Rex misconstrues my conclusion that the subject property, in a net liquidation value situation, has no value in terms of potential for selling to abutting forest land owners.

- 1) This conclusion appropriately considers that the subject property does not contain rights to any timber, and it is logical that timber property owners would have little to no interest in land without rights to timber.

**2) I have obtained letters from two abutting timberland owners (Rosoboro and D. R. Johnson) that completely support my conclusion. Reference is made to Attachment 6 of this Verified Statement.**

**(c) The claim that the subject land could improve access for abutting land owners is not categorically wrong but is judged to have very limited applicability in consideration of the steep topography that is predominant for the forest land portions of the subject property. Again, reference is made to the letters from abutting timber property owners that clearly indicate no such interest in the subject property with its encumbered title (see Attachment 6).**

**(d) The claims that I have incorrectly considered Timber Property are simply incorrect.**

**1) I have not assumed that the subject has no value as timber property, as claimed by Witness Rex on page 23 of his Verified Statement. I have explained and supported the rationale behind my conclusions.**

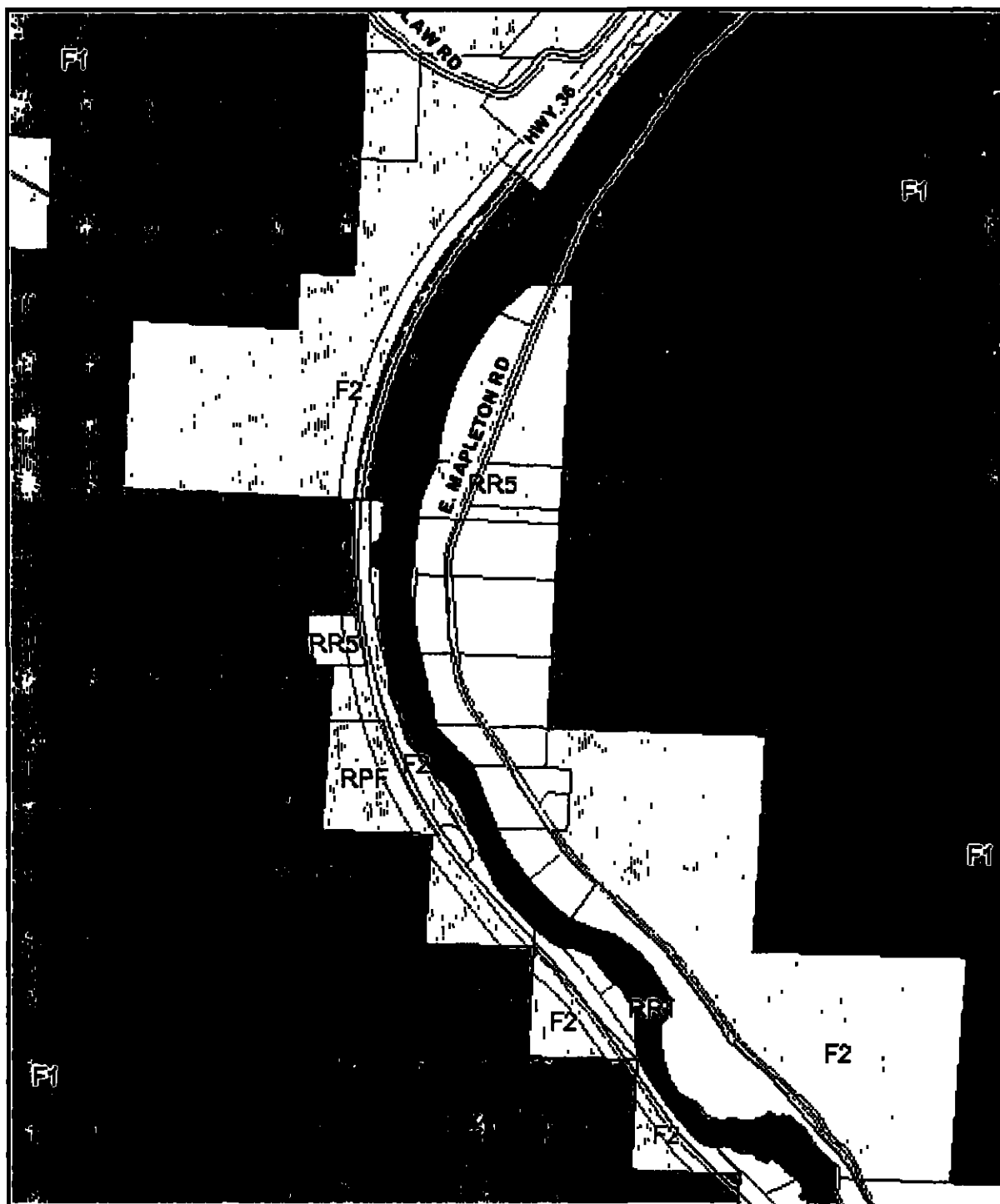
**2) CORP does not own the timber rights in Douglas County as incorrectly stated by Witness Rex on page 23. Reference is made to earlier in my Verified Statement where I addressed such claims made by Witness Cecil.**

**9. I have not misclassified the subject land, and certainly not in order to minimize my appraisal.**



- (a) Previously in this Verified Statement I addressed and refuted the allegations by Witness Rex that I have worked in a deliberate manner in order to minimize my value conclusion.**
- (b) In my analysis, I went to great lengths to correctly classify the subject land along the entire line. My analysis included all important factors such as zoning, property size, topography, utilities, and access.**
- (c) Witness Rex mischaracterizes and/or takes my analysis out of context. As I have explained in my appraisal, I correctly considered the subject property in relation to abutters in terms of the net liquidation scenario. In instances, it certainly is appropriate where my analysis has characterized the subject as Forest Nominal, even though residential-oriented property is abutting. Once again, Witness Rex is incorrect in concluding that the subject property constitutes "residential" property simply because residential-oriented properties are abutting; in the majority of instances, due to its encumbrances, restricted width, lack of access, etc., there is no relationship between abutting residential properties and the subject**
- (d) Table 4 provided by Witness Rex on page 26 is misleading because it does not indicate that my analysis has considered the size and nature of the abutting (ATF) properties. Reference is made to the actual summary of my analysis supporting my land classifications, as portrayed on pages 52 and 53 of my June 6, 2008 appraisal.**
- (e) The aerial photograph provided by Witness Rex on page 27 of his Verified Statement is misleading as it does not depict the key data**

considered in determining my Valuation Unit conclusions. As contradictory evidence I provide the following relevant portion of the zoning map that was a significant consideration in my analysis. The zoning map clearly shows that the area of analysis has a patchwork of different zoning classifications and therefore different market characteristics apply; the F1 and F2 zones are forest oriented and the RR1, RR5 and RPF are residential oriented. I therefore submit that the aerial photograph provided as evidence by Witness Rex is misleading and I have been wrongly criticized in this regard.



### Lane County Zoning Map

[Source: Land Co. Zone and Plan Map Viewer]

**10. Value discounts I have made relative to the property rights reserved by Southern Pacific Transportation Company (SPT) are appropriate, as detailed in my appraisal.**

- 1) Reference is made to the previously-provided rebuttal in regards to CORP Witness Cecil's Verified Statement.
- 2) Another example of the confusing and/or misleading comments is found in the third paragraph on page 31 of Rex Verified Statement. In a veiled attempt to establish reasonable comparison he compares his conclusion for Land Use 26, which was based on four sales with significantly incorrect or incomplete data, with a "February 2006" CORP sale that I could find no record of. It is reasonable to expect that a reader the Witness' Verified Statement could verify stated facts, but again insufficient information has been provided. In absent of any normal property identification data, my unsuccessful attempt to locate the February 2006 CORP sale included searching with RMLS using the city location and sale data; there was not enough information available to use the County Assessor's website.

**11. The statement is simply wrong that my appraisal contains many flaws that render it unreliable.**

Witness Rex has not supported this assertion but has established an illusion of support by providing incorrect data, inappropriate comparison to his appraisal, and/or by contorting my data and analysis by using it out of context.

- (a) Previously in this Verified Statement I have explained why it is inappropriate and otherwise wrong to compare his appraisal to my appraisal.
- (b) Regarding the City of Lakeside, I stand by my analysis and conclusions as detailed in my report.
- 1) The related criticisms leveled by Witness Rex are another example of misrepresenting and misleading my appraisal out of context. He is once again confusing and incorrectly considering at-the-fence values with the subject net liquidation value, which must consider the utility and value of the subject property relative to the at-the-fence properties.
  - 2) Witness Rex is being completely misleading by characterizing the cited real estate agent's comments as a "tongue-in-cheek statement", and by insinuation that the agent's comments are dated because the area was developed in 2005; the subdivision in question may have been undeveloped in 2005, but it remains overwhelmingly vacant and unsold as of the date of value, and the real estate agent was very seriously discussing the extremely poor market conditions it was experiencing with this subdivision, which is located in very close proximity to the subject line.
  - 3) My opinions are far from unsupported as he claims. My analysis is detailed throughout my appraisal report and appropriate when considered in context of the appraisal as presented.

**(c) Subject land in the City of Veneta is worthless in terms of the subject Net Liquidation Value, as detailed in my appraisal and supported by additional proof provided as Attachment 3. Reference is made to my prior comments regarding the City of Veneta, which were made in rebuttal to the Verified Statement of CORP Witness Cecil.**

**1) Witness Rex has made an inappropriate critique by suggesting I should have considered the value of the subject property based on some petition for a zone change for the subject property. This gives no regard to the speculative nature of this process, let alone the timing and cost. In diligent appraisal practice, you cannot value a property based on a zone change, especially without addressing the costs and difficulties of obtaining such.**

**2) Witness Rex's comments in this regard stem from his apparent unwillingness to grasp or accept my appraisal methodology, which I have shown to be accurate and appropriate for the subject net liquidation value.**

**3) Witness Rex's comments regarding my valuation of the subject line through Veneta is another example of his mixing my analysis with his incorrect appraisal methodology.**

**(d) My value conclusions regarding land in and near Hauser are reasonable and reliable.**

- 1) This is another example of Witness Rex considering my appraisal analysis and conclusions out of context and in regard to his incorrect appraisal analysis.
  - 2) He has referred to a handwritten note (provided as Attachment 6), which is taken out of context. The note provides no indication of why it was written, who said it, and in what context.
  - 3) Reference is made to my appraisal that details the rationale for my conclusions. Generally speaking, the open space or environmental-oriented zoning and wetland topography abutting the subject property were main reasons for my conclusions.
- (e) My appraisal conclusions of the subject line through Bickerville and Mapleton are accurate.
- 1) Again, Witness Rex is criticizing my appraisal methodology in relation to his and not on its own merits. My report details my rationale for classifying the sections questioned by Witness Rex.
  - 2) The appraisal sections identified on Table 5 by Witness Rex are correctly classified in terms of the nature of the abutting properties and the potential contributory value of the subject to those properties in light of their zoning, property size, and land use.
- (f) My discount from ATF values of industrial properties in Reedsport was reasonable and reliable and contrary to the claims by Witness Rex.

This is another example of Witness Rex misrepresenting my appraisal by relating it to strict ATF valuation, which is not the approach in

my valuation because such is only suitable for viable and functioning corridors.

**12. I have made realistic assumptions in calculating net present value from gross value.**

My assumptions are credible within the context of the proper net liquidation value appraisal methodology that I have correctly utilized. Once again, Witness Rex is confusing issues by comparing my appraisal to his dissimilar appraisal, which is based on incorrect appraisal methodology.

**IV. Comments on the Size and Title Information Provided by CORP**

The size and title information provided by CORP Witness Rex is different from that I found to be available and reasonable. However I can not provide a reasonable assessment of the differences and adequacy relevant to my conclusions, for the following reasons.

**A. The data and analysis explaining and supporting the size conclusions of Witness Rex are insufficient for rendering a reasonable judgment**

- 1) Insufficient information is provided to check for the adequacy and accuracy of the reported conclusions (conclusions are simply stated and supporting analysis is not summarized to provide sufficient understanding by reader).
- 2) It is understood that the difference in the amount of area considered for the subject property is approximately 100 Acres. I am unable to comment on the nature of the differences do the limited nature of the data provided.



- 3) Mr. Rex states that his analysis was based on the title report provided by Gleaves Swearingen Potter & Scott LLP but his analysis does not seem to considered the adequacy of such, as the follow comments address.

**B. The title analysis and data relied on are too confusing**

- 1) Witness Rex claims to have relied on and therefore considered the title report provided by Gleaves Swearingen Potter & Scott LLP. However upon review I found the provided title report to be confusing and Witness Rex provided no related analysis clarifying the title report and how he was integrating it into his analysis.
- 2) The RMI appraisal apparently addresses title encumbrances between pages 27 and 32, and then applies the analysis to Figure 25, but the analysis is deemed to be too confusing to be deemed reasonable or credible. I was unable to adequately follow the analysis of Witness Rex and surmise that is insufficient for reasonable understanding by the intended users of the report.

**VERIFICATION**

I, Jay J. DeVoe, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified authorized to file this verified statement.

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Jay J DeVoe  
J.J. DeVoc & Associates

Dated: September 9, 2008

**Attachment 1**  
**Qualifications of Appraiser**

**QUALIFICATIONS AND GENERAL EXPERIENCE OF JAY J. DEVOE, MAI, SR/WA**

**Professional Experience:**

**1999-**

**Present:** Real estate appraisal, consultation, and right-of-way negotiations  
Dba J J. DeVoe & Associates

**1998-1999:** Right of Way Agent, Oregon Department of Transportation (ODOT), Portland

**1994-1998** Full-time real estate appraiser and consultant for Ashley, Chapman & DeVoe

**1991-1994:** Partner in DeVoe & Associates, real estate appraisal and consulting firm

**1988-1991:** Full-time real estate appraiser with David M. DeVoe, MAI, SRPA

**Education:** Loyola Marymount University

B A Degree – 1988

Major Emphasis – Finance

Minor Emphasis – Economics

(Academic Dean's List, Crimson Circle Service Organization)

**Miscellaneous:** Eagle Scout, Boy Scouts of America (Awarded 1981)

**Professional Memberships:** International Right-of-Way Association  
Chair of Professional Development Committee, 2000-2003  
Co-Chair of Transportation Committee, 1999  
Chair of Advertising Committee, 1993 and 1994  
The Appraisal Institute (Designated Member, MAI)

**Professional Designations:** Senior Right of Way Associate (SR/WA), International Right Of Way Assoc. (IRWA)  
No. Member No. 106719, April 2005, March 1994 (Re-certified 1999 & 2004)  
Member of the Appraisal Institute (MAI), The Appraisal Institute  
Member No. 106719, April 2005

**Licenses:**

Certified General Real Estate Appraiser, Oregon (No. C000651)  
Certified General Real Estate Appraiser, Washington (No. 1100590)  
Real Estate Broker, Oregon (No. 990500147)

**Expiration**

May 23, 2010  
May 23, 2009  
May 23, 2010

**Education in Appraisal and Right of Way:**

**The Appraisal Institute**

USPAP Update (7 Hours), 2006  
Business Practices & Ethics, 2006  
Valuation of Detrimental Conditions, 2006  
USPAP – 15 Hour, 2005  
Valuation of Detrimental Conditions in Real Estate, 2006  
Advanced Sales Comparison and Cost Approaches, 2004  
Highest and Best Use and Market Analysis, 2003  
USPAP Update 2003, Standards and Ethics for Professionals (2003)  
Standards of Professional Practice, Part A (USPAP), 1996  
Standards of Professional Practice, Part B (USPAP), 1991  
Capitalization Theory & Techniques, Part A, 1991  
Real Estate Appraisal Principles, course successfully challenged, 1994  
Basic Valuation Procedures, course successfully challenged, 1994  
Report Writing and Valuation Analysis, 1994  
Advanced Income Capitalization, course successfully challenged, 1995  
Advanced Applications, 1995  
Standards of Professional Practice, Part B (USPAP), 1996  
Internet Search Strategies for Real Estate Appraising, 1999 seminar  
Analyzing Operating Expenses, 1996 seminar

**PUBLIC VERSION**

**QUALIFICATIONS AND GENERAL EXPERIENCE OF JAY J. DEVOE, MAI, SR/WA**  
**(Continued)**

**Education in Appraisal and Right of Way (Continued):**

**International Right-of-Way Association**

Principles of Real Estate Acquisitions, 1989  
Easement Valuation, 1990  
Legal Aspects of Easements, 1990  
Bargaining Negotiations, 1990  
Group Communications, 1991  
Appraisal of Partial Acquisitions, 1991  
Introduction to the Income Approach of Valuation, 1992  
Understanding Environmental Contamination in Real Estate, 1993  
Property Descriptions, 1993  
Appraising More Than Land and Buildings, 1996 seminar participant  
Skills of Expert Testimony, 1998  
Uniform Relocation Assistance Act-Summary, 1998  
National Uniform Standards of Professional Appraisal Practice (USPAP), 2001

**Other**

Eminent Domain Training for Attorney and Appraisers, National Highway Institute, 1999  
Residential Case Studies, American College of Appraisal, 1999  
Property Management, Merritt Community College  
Real Estate Practice, Chabot Community College  
Real Estate Law, Merritt Community College  
Real Estate Finance, Merritt Community College  
Principles of Residential Appraisal, UC Berkeley Extension  
Principles of Real Estate, Chabot Community College

**Property Types Appraised:**

Agricultural	Grazing, Timberland, Nurseries, Vineyards, Open Space
Commercial	Mixed Use, Offices, Retail, Shopping Centers
Industrial	Heavy & Light Manufacturing, "Special-Purpose Facilities, Warehouses
Residential	Single- & Multi-family, Subdivisions
Vacant Land.	All Types

**Right of Way Experience:**

Appraisal	Full Acquisitions and Complex Partial-Acquisitions Before & After and Take & Damage Methodologies
Acquisition	Simple to Complex Files
Relocation.	Benefit Studies

**Client List (more detail available upon request):**

Attorneys	Non-Profit Corporations	Corporations
Banks	Park Districts	States
Cities	Private Property Owners	Counties
Insurance Companies	Utility Companies	

**Attachment 2**

**Appraisal Review Report regarding RMI Midwest appraisal of subject property**

**STB Finance Docket No. 35160**  
**Oregon International Port of Coos Bay -- Feeder Line Application**  
**Coos Bay Line of Central Oregon & Pacific Railroad**  
**Between Danebo and Cordes, Oregon**

**Appraisal Review**  
**of**  
**RMI Midwest Land Appraisal**

**by**  
**Jay DeVoe, MAI, SR/WA**

## **INTRODUCTION TO APPRAISAL REVIEW**

### **QUALIFICATIONS OF THE REVIEW APPRAISER**

The appraisal review has been prepared by Jay J. DeVoe, MAI, SR/WA. I am President of and Appraiser at J.J. DeVoe & Associates, Inc., located at 4535 SW 96<sup>th</sup> Avenue, Beaverton, Oregon 97005. I am a state-Certified General Appraiser with nearly twenty years of experience and hold the highest professional designations by the Appraisal Institute (MAI) and the International Right-of-Way Association (SR/WA).

The property that is the subject of the appraisal under review is a property type that I have experience appraising and I am competent in regard to the pertinent geographic areas.

My appraisal review investigation and analysis has been aided by Steven M. Beaman, CCIM who is a state-Certified General Appraiser, operating as an independent contractor. For the purposes of the appraisal review he investigated and reported on market data and provided consultation.

Our respective qualification summaries, detailing the appraisers' education and professional experience and qualifications, are provided in the Addenda section of this report (see Section A).

### **REPORT FORMAT OVERVIEW**

The appraisal under review, prepared by Charles W. "Sandy" Rex III ("Mr. Rex") of RMI Midwest ("RMI") and further identified below, was found to have numerous errors, ambiguities, and inconsistencies, to the magnitude that it was impracticable to review and discuss all of them in a succinct statement of my findings and conclusions. I have organized this appraisal review report, which is presented as an attachment to my Verified Statement, with regard to the purposes of this review and its intended audience. The report layout is as follows:

- I. Appraisal Review Premises and Introductory Data**
- II. Summary of review findings and conclusions**
- III. General and/or significant problems with appraisal under review**
- IV. Problems and concerns regarding specific portions of appraisal under review**
- V. Certificate of Review Appraiser**
- VI. Addenda**



## **APPRAISAL REVIEW PREMISES & INTRODUCTORY DATA**

### **I. APPRAISAL REVIEW PREMISES & INTRODUCTORY DATA**

#### **CLIENT AND INTENDED USERS OF THE APPRAISAL REVIEW**

The client for this appraisal review is the Oregon International Port of Coos Bay (OIPCB) and its agents.

The intended users of this report are OIPCB, the Surface Transportation Board (STB) and its agents. It is understood that OIPCB may share a copy of the appraisal report with the Surface Transportation Board (STB) and/or their representatives. Otherwise, the report may not be used or relied upon by anyone other than OIPCB, for any purpose whatsoever, without the express written consent of the appraiser.

#### **PURPOSE AND INTENDED USE OF APPRAISAL**

The purpose of this appraisal review is to provide OIPCB with an impartial opinion as to the credibility and reliability of the appraisal prepared by Mr. Rex of RMI, "Net Liquidation Valuation of The Feeder Line Application of the Coos Bay Line in Lane, Douglas, and Coos Counties, OR", dated August 26, 2008 (Subject Appraisal), and submitted to the STB as an attachment to the Response filing of the Central Oregon & Pacific Railroad, Inc. (CORP) in STB Docket No. 35160.

The intended use of this appraisal review is to provide OIPCB with a supportable opinion indicating the reliability and credibility of the Subject Appraisal for purposes of its Feeder Line Application in STB Docket No. 35160.

#### **SUBJECT OF THE APPRAISAL REVIEW ASSIGNMENT**

Net Liquidation Valuation of Coos Bay Line in Lane, Douglas, and Coos Counties, Oregon

#### **APPRAISER COMPLETING WORK UNDER REVIEW**

Charles W. (Sandy) Rex III, of the appraisal company RMI Midwest.

#### **IMPORTANT DATES OF THE APPRAISAL**

Effective Date of Review: September 8, 2008

Date of Work Under Review: August 26, 2008

Effective Date of Work Under Review: July 26, 2008

#### **PROPERTY AND OWNERSHIP INTEREST APPRAISED IN WORK UNDER REVIEW**

Fee simple interest, taking into account rights held by others (e.g. roads) [sic]

## **APPRAISAL REVIEW PREMISES & INTRODUCTORY DATA**

### **SCOPE OF APPRAISAL REVIEW ASSIGNMENT**

This appraisal review assignment is being conducted to provide OIPCB with an indication of reliability and credibility of the Subject Appraisal for purposes of OIPCB's Feeder Line Application in STB Docket No. 35160.

The reporting scope is that of summary format developed to meet the requirements of Uniform Standards of Professional Appraisal Practice (USPAP).

The scope of my inspection of the Subject Property consisted of viewing it from the air (via helicopter), from public rights of way (i.e. public roads), and/or from accessible abutting sites. The inspection dates occurred in March and April, 2008.

The comparable sales cited in the appraisal under review were generally not viewed by the reviewer. Some had been viewed previously in regard to a prior appraisal assignment.

The scope of my analysis for this appraisal review consisted of the following:

- Reading the Subject Appraisal and the accompanying Verified Statement of Mr. Rex.
- Formulating opinions regarding reasonableness of Mr. Rex's appraisal methodology, data, analysis and conclusions.
- Formulating opinions about Mr. Rex's conformance to governing professional standards (i.e. USPAP), as professed by Mr. Rex.
- Spot-checking of Mr. Rex's mathematical calculations.
- Analyzing and verifying certain suspect data.

The scope of analysis for the appraisal review did not include the following areas:

- Determination of appropriateness of fee title data relied upon by the appraiser.
- Discussion with RMI Midwest appraisers or staff.
- Checking of all mathematical calculations (i.e. Figure 16 spreadsheet).
- Verification of all market data cited in report.

### **ASSIGNMENT CONDITIONS AND EXTRAORDINARY ASSUMPTIONS**

This Appraisal Review is specifically conditioned upon the following special assignment conditions and/or extraordinary assumptions:

- My review of this appraisal has been conducted in an independent manner intended to have no reflection of the prior appraisal assignment that I conducted at the request of OIPCB regarding the subject property in connection with OIPCB's Feeder Line Application. My previous appraisal of the subject provided me with significant knowledge of the subject property and relevant markets. However, I wish to emphasize that this document is a stand-alone appraisal review. I have strived not to make any comparisons between my

## **APPRAISAL REVIEW PREMISES & INTRODUCTORY DATA**

former appraisal of the subject and the RMI appraisal under review; rather, I have reviewed Mr. Rex's appraisal on its own terms adopting the approach that would be followed by any respectable licensed appraiser called upon for this task.

- The RMI appraisal considers only those portions of the subject railroad line that are owned in fee, which was determined based on a title study provided by Gleaves Swearington Potter & Scott LLP. A copy of this study has been provided at the end of the RMI report as "Addendum C: Title Report." I have not investigated the accuracy of the title information reported.

As part of this appraisal review, I have incorporated no opinion regarding the subject property's title makeup (such is beyond the scope of this appraisal review assignment). For the purposes of this appraisal review, I have assumed that the title reported by Mr. Rex for the purposes of his appraisal is correct.

This assignment condition is not to be confused with my analysis of the timber rights that have been incorrectly considered by the appraiser, as elaborated upon in the following pages.

### **HYPOTHETICAL CONDITIONS**

A hypothetical condition is an assumed condition that is contrary to known facts but is supposed for the purpose of analysis.

Initially, I did not plan or anticipate on incorporating any hypothetical conditions to facilitate this review. However, as further explained below, I conclude that Mr. Rex employed an incorrect appraisal methodology in order to estimate the value of the subject property. Given my conclusion, I have judged it best for the sake of reviewing the other parts of the appraisal to assume that Mr. Rex used a correct appraisal methodology. This assumption is appropriate because it allows me to critique Mr. Rex's approach and conclusions within the context of his own work. Apart from my initial explanation of the basic flaw in Mr. Rex's chosen methodology (Section III.A, below), I have generally considered the RMI appraisal on its own terms—an "apples to apples" approach. Thus, I have considered the quality of the appraisal within the context of the erroneous methodology used by the appraiser.

## SUMMARY OF REVIEW FINDINGS AND CONCLUSIONS

### II. SUMMARY OF REVIEW FINDINGS AND CONCLUSIONS

As a summary overview, the Subject Appraisal uses incorrect appraisal methodology, often relies on irrelevant market data, and it does not appear to be compliant with USPAP in several significant ways.

In some cases there appears to be no sound or adequate logic being employed by the appraiser in his valuation, whereas in several instances the appraiser's value conclusions are based on sales involving properties with entirely different land use potential (see Land Use categories 7, 14, 22, 25, 28 & 29). In one instance this is compounded because the appraiser's value conclusion is not within the range of price per acre indications established by the sales cited. In other cases no individual market sales or other compelling data are provided as support for the conclusions reached.

#### A. **Completeness of material under review**

The appraisal under review was found to be incomplete or insufficient in regards to many important elements, which include the following:

1. Reporting of key subject property data and analysis was insufficient or non-existent.
2. The appraiser has included the value of timber rights that are owned by another entity.
3. Reporting of sales data and analysis was insufficient or not provided.
4. Incorrect value conclusions were utilized by the appraiser in his calculation of net liquidation value (refer to Land Use 33 for one example noted).

#### B. **Appropriateness of appraisal methods and techniques Used**

The appraisal has been based on incorrect appraisal methodology, as I have explained and exemplified later in this review appraisal report.

#### C. **Apparent adequacy and relevance of the data and adjustments to the data**

1. In many instances it is apparent that the appraiser's market data is not relevant to the subject ATF properties. In other instances is often not apparent if the data is adequate because insufficient information and analysis is provided:
2. The few adjustments made to the market data have not been supported. In other instances the appraiser's comments and other data indicators suggesting that adjustments are called for (i.e. market conditions, improvements, etc.) but no adjustments were made.

## **SUMMARY OF REVIEW FINDINGS AND CONCLUSIONS**

### **D. Opinion of appraiser's analysis, opinions, and conclusions**

My final overall opinion of the appraisal under review is that it is not credible. Because of the multitude of significant errors, inconsistencies, and USPAP conflicts, as explained below, Mr. Rex's appraisal cannot be considered a reliable appraisal. Simply put, the subject appraisal and the work-product do not approach the standards of professionalism and accuracy that would be expected of a licensed appraiser and especially one with Mr. Rex's experience and credentials.

## **GENERAL AND/OR SIGNIFICANT PROBLEMS WITH APPRAISAL**

### **III. GENERAL AND/OR SIGNIFICANT PROBLEMS WITH APPRAISAL UNDER REVIEW**

#### **A. Unmodified ATF methodology used by RMI is not directly applicable**

RMI uses strict ATF methodology in order to estimate the value of the subject property. This approach is recognized as being applicable for railroad corridors that have the highest and best use for continued use as an assembled corridor. But, a strict ATF approach is not applicable or appropriate for piecemeal disposition. For purposes of the NLV analysis in a Feeder Line Proceeding, it is assumed that the subject property does not have demand for continued corridor usage and would be subdivided into, and disposed of as individual parcels. The following sources confirm that Mr. Rex's strict ATF approach is improper:

1) In 1981, the United States Department of Transportation published a manual titled Real Estate Appraisal of Abandoned Railroad Rights-of-Way.

- a) The manual cautions that the tendency to apply an across-the-fence value to the land of a former railroad corridor is a grossly inaccurate approach that totally neglects the true basis of resale value (pages 1 and 2).
- b) On page 20, the manual states, "However, more often than not the highest and best use of the right-of-way will be for piecemeal disposition. This situation requires a multi-stepped process. The appraiser must determine the highest and most profitable re-use for the right-of-way; the land must be divided into developable or abutter-type property; and these properties must be divided into disposition parcels requiring individual appraisal."

It is not the highest and best use of the abutter that establishes value of an abandoned rail corridor, and therefore pure ATF methodology is not applicable. Instead, it is the potential use that the rail line offers to abutters that is the basis of net liquidation value. The clear majority of the subject corridor would be valuable only to abutting landowners, and therefore the assemblage value to the abutter is the proper foundation for estimating net liquidation value (explained further, below).

- c) RMI has divided the subject into segments in terms of land type for ATF valuation, but not undertaken is the required step of considering the property in terms of likely disposition parcels and the contributory utility/value provided to the abutter by the subject. By only considering and estimating ATF value, Mr. Rex considers the subject more like an operating/functioning rail corridor and does not accurately address the realities associated with piecemeal sale of the line and the property's net liquidation value.

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- d) The fact that a certain property type abuts an abandoned railroad right-of-way is not simply indicative of the right-of-way upon piecemeal disposition.

For example, the subject line does not represent a homesite, and should not reflect the value of such, where it abuts 1 acre rural homesites with 5 acre minimum lot size (the subject does not offer potential for another homesite); in such an instance a reasonable and knowledgeable buyer of the subject line would not expect the abutters to buy the subject at prices equal to homesite values (a much lower price oriented towards agriculture and/or open space can generally be expected).

- 2) In his article "The Continuing Evolution of Corridor Appraising (Back to the Basics)" Charles F. Seymour, CRE, MAI states the following of relevance:

"Not every long, narrow strip of land or property rights meets the definition of a corridor. Some never did, and others once did but now have been 'abandoned' because they no longer perform the defined function of creating economic or social value by connecting the end points. ..."

"...when the appraiser determines that his subject does not meet the definition of a corridor, the usual sales comparison approach can appraise it for its net liquidation value with appropriate penalties for size, shape, and access. Some appraisers have used the ATFx's CF methodology, and analyzed sales of abandoned corridors in relationship to their ATF on the date of sale. These tend to show negative corridor factors ranging up to 0.35, with the usual exceptions for erratics."<sup>1</sup>

In summary, Mr. Seymour is making the point that ATF values are not directly applicable when appraising a former corridor property. ATF values can be used as a starting point but for net liquidation value but the analysis must recognize value discounts for size, shape, and access. Appraiser Rex has relied on ATF value estimates without discounting for the subject's limited utility and therefore he has not used correct appraisal methodology.

- 3) RMI recognizes that it is estimating the subject's Net Liquidation Value and that the property's highest and best use is for disassembling the corridor and sale to adjacent land owners (see appraisal page 6). However, the RMI analysis does not consider the utility and thereby the value that the subject property offers to abutters. By simply relying directly on ATF value estimates, a reliable representation of the subject market value is not possible. The following is an

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<sup>1</sup> Charles F. Seymour, CRE, MAI, "The Continuing Evolution of Corridor Appraising (Back to the Basics)," Right-of-way May/June 2002: p. 20

## GENERAL AND/OR SIGNIFICANT PROBLEMS WITH APPRAISAL

example of why the unmodified ATF valuation method employed by RMI is incorrect.

a) Consider a section of abandoned railroad that abuts  $\pm 7$  acre rural residential sites on both sides. The market value of these abutters is \$400,000 per site, or approximately \$1.30 per square foot. Zoning for the abutting sites requires a minimum of 5 acres per home; therefore each ATF property needs approximately 3 acres of former railroad right of way property to gain the potential for another homesite, which is not practical or likely to be obtained due to the limited size of the disposition parcel.

b) As such, the \$1.30/SF ATF value is not directly applicable to the subject property (former railroad corridor), because it would not allow the abutters to add another homesite, which would be the rationale for the \$1.30/SF valuation. Instead, the subject would contribute value, if any, at a much lower rate that is commensurate with the added utility that the area provides abutters.

The addition of a reasonable portion of abutting railroad line for the properties in this example will only offer limited utility to the abutters, which often equates to surplus area akin to yard, pasture, and/or open space uses that command significantly lower value than the abutting homesites. To apply ATF values to the segment of abandoned railroad line use in this example would grossly overvalue the line segment

4) The foregoing concept of "surplus land", and sometimes termed "excess land", is discussed in widely-accepted appraisal texts, and arises frequently in tax court proceedings.

As additional support I refer to an article by Chet Boddy, a real estate appraiser and broker in California, that includes the following:

"If you own a house on 40 acres, most banks will base your residential loan on the house and the surrounding 5 acres and will disregard the remaining 35 acres. The 5-acre portion is called the 'land and use.' The 35-acre portion is called 'excess land.' ... Excess land is unused land which is not needed to serve or support the primary highest and best use. It can be dividable or undividable, and can even have its own separate highest and best use, such as agriculture or timber production."<sup>2</sup>

5) In *Oregon Department of Transportation v. Southern Pacific Transportation Co.*, the court noted that the ATF approach was appropriate once Southern Pacific

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<sup>2</sup> Chet Boddy, "Excess Land" (part of monthly column, "Back to the Land"), Mendocino Coast Real Estate Magazine, Copyright © 2002, Presented at [www.chetboddy.com/pages/excessland.html](http://www.chetboddy.com/pages/excessland.html)



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Transportation Co. proved that the railroad property still had use as a railway or utility corridor.<sup>3</sup>

This is judged to provide a local, legal precedent that the unmodified ATF valuation methodology employed by RMI is not appropriate for establishing the net liquidation value of the subject property.

### **B. The report format provided by RMI is judged to be noncompliant with USPAP Standards Rule 2.**

Mr. Rex states in his appraisal certification (page 44 of report) that the report has been prepared in conformity with USPAP. Furthermore, he qualifies the report as a "Summary Format" appraisal report (page 2 of report). However, in many instances the report fails to meet the applicable USPAP standards or guidance with the result that his analysis and conclusions are not reliable.

- 1) According to USPAP advisory opinion 11, **"Summary Appraisal Report should contain a summary of all information significant to the solution of the appraisal problem. 'Summarize' is the distinguishing term related to the Summary Appraisal Report.... The intended users of the Summary Appraisal Report should expect to find all significant data reported in tabular or abbreviated narrative formats."**

This is differentiated from the least detailed reporting format (**Restricted Use Appraisal Report**), which **"...should contain a brief statement of information significant to the solution of the appraisal problem. 'State' is the distinguishing term related to the Restricted Use Appraisal Report."**<sup>4</sup>

- 2) Mr. Rex has provided insufficient information, as required for a Summary Report. As such, he has not explained or adequately supported the rationale and/or basis for his value conclusions for the majority of the land use segments analyzed. (see comments later in this review, under the section titled "Problems and Concerns Regarding Specific Portions of the Appraisal Under Review")
- 3) As an example (more are provided later in this review), the Mr. Rex's valuation of Land Use 25 is unsound. This Land Use is labeled "Campsite" and applies to four segments of the subject property. The complete extent of Mr. Rex's valuation analysis on page 19 of his report is as follows:

"No recent sales of campsite/trailer park sites were obtained. These segments were valued at the same price as for residential development

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<sup>3</sup> Todd Amspoker, Esq., "The Legality of Across-the-fence Appraisal Approach in Eminent Domain Proceedings," Right-of-way Sept./Oct. 2000 p. 9

<sup>4</sup> USPAP Advisory Opinions, 2008-2009 Edition, The Appraisal Foundation, p. A-23

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derived from single-family-residential lot prices. Accordingly, the estimated unit value is [            ] per acre."

Mr. Rex offers no explanation or rationale as to how or why the ATF properties for the subject property segments constitute "Campsite" property. This defect is compounded by the absence of explanation or rationale as to how or why the single-family residential property sales have any relation to the "Campsite" designation of the subject property. Further, no specific sales data or analysis is provided to aid the reader in understanding if and how the value conclusion reached by RMI is reasonable. Thus, Mr. Rex's failure to adhere to USPAP causes serious substantive shortcomings that render his product unreliable.

### **C. Development of the appraisal under review appears to be noncompliant with USPAP Standards Rule 1.**

- 1) USPAP Standards Rule 1-3(a) states the following: **"When necessary for credible assignment results in developing a market value opinion, an appraiser must: (a) identify and analyze the effect on use and value of existing use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends; ..."**<sup>5</sup>

- a) Regarding zoning and land use, **only** the following text is provided in the RMI appraisal (page 6):

"Portions of the ATF are zoned by Lane, Douglas, and Coos Counties. The predominant zoning/land use classification is Forest Land; however, portions are zoned Residential, Commercial, Industrial, Recreational, and Farm. In classification the ATF land uses, we consider current zoning and land use codes."

1. The appraiser does not mention or apparently consider that the subject and ATF areas are also zoned by the cities of Reedsport and Lakeside. Therefore it is apparent that he has not correctly, if at all, considered the zoning and land use regulations that are fundamental components of value for the related portions of subject.
2. For the zoning jurisdiction that are recognized, the appraiser has failed to identify applicable land use zones and analyze the effect on use and value of existing land use regulations, which is required by USPAP, as noted above.

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<sup>5</sup> USPAP 2008-2009 Edition, The Appraisal Foundation, p. U-17

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3. A good example of the extent of analysis and reporting that should be present for the zoning analysis is provided on pages A-25 and A-26 of USPAP 2008-2009.
- b) Regarding market data trends, it appears that Mr. Rex did not adequately consider economic supply and demand, or appropriately investigate and apply market area trends for the discrete communities along the subject property.
  1. The following from pages 6 and 9 of the RMI report is essentially the full extent of market analysis provided by the Mr. Rex:

“While the residential market for the subject communities has recently experienced a downturn of approximately 6 percent in average home sales value over the past year, due to oversupply and increases in foreclosures, the five- and ten-year sales history for the subject communities show an average annual increase in median home sale values of 13 and 25 percent, respectively. The industrial market shows an oversupply and little demand, while the commercial and acreage market does not appear to be affected by the current residential downturn.” [page 6]

“ATF unit values for the various land uses are estimated using the comparable sales shown, as well as area listings, which in a declining market may indicate downward trends where listing prices are lower than comparable sale prices. In the subject’s market areas, listing prices were typically higher than comparable sales. My conclusion is that in spite of the nation-wide declining real estate market, there is little or no evidence that the subject ATF prices should be adjusted below the prices indicated by the comparable sales.” [page 9]
  2. Regarding residential market conditions, the source for the 6 percent downturn over the past year is not provided; nor is there any explanation as to how this figure is appropriate for all communities along the 111 mile subject property. Moreover, despite identifying this downturn, Mr. Rex makes no adjustment to the comparable sales that occurred within one year of the valuation date. Furthermore, the residential sales relied upon by Mr. Rex date back as far as February 2005 (over three years prior to date of value), and insufficient mention or analysis of market conditions between February 2005 and May 2007 was provided by the appraiser.

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3. Mr. Rex offers insufficient analysis and data regarding the industrial, commercial, and acreage markets despite reliance on sales extending as far back as years 2004, 2001 and 2000.
  4. The appraiser has provided no clear mention or indication of market conditions pertaining to timber lands, which make up a significant portion of the ATF properties. Market conditions for such are two-fold in that timber properties consist of land and timber, with the latter typically reflecting relatively dynamic and variable market conditions.
- c) The physical characteristics of abutting lands apparently were not adequately considered. It is paramount for an ATF valuation to consider the makeup of abutting properties, as the name of the appraisal methodology implies, and apparently this has not been done by RMI as part of its appraisal process.
1. An example of importance is property size: it would typically be improper to apply sales of 1-acre industrial sites to portions of the subject property that abut 25-acre rural industrial sites (the latter typically reflect significantly lower prices per acre). Readers of the RMI appraisal cannot reasonably discern the size of the abutting properties pertinent to each segment and land use allocated by RMI in its appraisal.
  2. Another example of an important property characteristic is topography. Again, RMI has not made it apparent that topography of abutting properties and the sales have been considered for much of the ATF property.
- 2) USPAP Standards Rule 1-6(a) states: **“In developing a real property appraisal, an appraiser must: (a) reconcile the quality and quantity of data available and analyzed within the approaches used;”**<sup>6</sup>
- a) Generally speaking, “reconciliation” refers to the appraiser’s effort to provide an integral quality control assessment prior to reaching the final opinion of value. The process of reconciliation is an extremely important appraisal element because it promotes accuracy and consistency, and it helps identify key factors that must be cited and explained in the appraisal report for credibility.<sup>7</sup>
  - b) It is not apparent that RMI has performed an adequate reconciliation process. Such should point out that many of the land use segments had no or extremely little relevant market data (as reported) and that the applicability of the limited data used had little or uncertain comparability (whereas land zoning, abutting sizes, etc. were apparently unknown).

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<sup>6</sup> USPAP 2008-2009 Edition, The Appraisal Foundation, p. U-19

<sup>7</sup> The Appraisal Institute. The Appraisal of Real Estate, 12<sup>th</sup> Edition. 2001. p. 597

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- c) The reconciliation process is also very important due to the appraiser's use of and predominant reliance on the statistical mean that stems from a limited sampling of sales that extends back nearly four years before the date of valuation.
- d) By performing an adequate reconciliation process, the appraiser would have addressed the many apparent inconsistencies of value conclusions. The following are examples of apparent inconsistencies that ideally should be addressed and clarified in the required reconciliation process:
  - 1. The four land use segments identified as "Rural Residential" have value conclusions ranging from [            ] per acre to [            ] per acre; no explanation or data supporting the wide range is provided.
  - 2. Mr. Rex essentially concludes that residential land in Mapleton (Land Use 10) is worth [            ] per acre and five times his conclusion for residential land in Swisshome (Land Use 5). These communities are located only ±6 miles apart, are along the same highway and river, and both can also be characterized as small, remote communities (though Swisshome is smaller). The disparity in value conclusions reached by RMI seems extraordinary and certainly warrants discussion and explanation supporting the conclusions relative to one another.
  - 3. Timber acreage land values range from [            ] per acre for Douglas County (Land Use 15) and [            ] per acre for Lane and Coos Counties (Land Uses 2 and 24). My guess is that the inconsistency results from the limited sampling of data used and furthermore is skewed by the value of timber present on the sale properties (versus land value); however, such data is not adequately addressed in the appraisal for me to be certain. Nonetheless, reconciliation of the apparent inconsistencies in timber acreage value conclusions seems reasonable if not required by USPAP.
  - 4. Inconsistency of value conclusions reached by Mr. Rex is apparent between rural residential Land Units 1, 34 and 38 (Rural Residential, Between Noti and Veneta). Reference is made to the following discussions pertinent to Land Units 34 and 38.
- 3) As a caveat to this portion of my analysis and conclusions, my ability to assess the appraisal's compliance with USPAP Standards Rule 1 has been hampered by the insufficient reporting of data (as previously addressed regarding USPAP Standards Rule 2).

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### D. There is a possible USPAP Competency Rule violation.

It is not clear that Mr. Rex has met the USPAP Competency Rule, which reads:

**“Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have knowledge and experience to complete the assignment competently; or alternately, must:**

- (1) Disclose the lack of knowledge and/or experience to the client before accepting the assignment;**
  - (2) Take all steps necessary or appropriate to complete the assignment competently; and**
  - (3) Describe the lack of knowledge and/or experience and steps taken to complete the assignment completely in the report.”<sup>8</sup>**
- 1) My prior and following comments are felt to provide sufficient indication that the appraisal assignment was not conducted competently.
  - 2) It is reasonable to conclude that at least some of the report deficiencies stem from the appraiser not being sufficiently familiar with timberlands and the market areas relevant to the subject property.
    - a) The timber acreage valuation made no consideration of the value of timber present on the subject, abutting properties, or sale properties, which is typical and very important in the valuation of timberlands.
    - b) The report does not indicate that there is knowledge of nuances between the various areas that the subject line extends through. For example, a single market trend indicator was mentioned for the residential market as being applicable to the entire 111-mile line that extends through three counties and includes very different geographic areas (coastal, mountains, and Willamette Valley).
  - 3) The appraiser has not mentioned or explained steps taken to become competent in appraising the subject markets, which is required by USPAP’s Competency Rule. Mr. Rex, who is appraising in a different region from his office via temporary practice license, should illustrate his competency through his report writing and/or explain the steps taken to complete the subject assignment competently.

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<sup>8</sup> USPAP 2008-2009 Edition, The Appraisal Foundation, p. U-11

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### **E. At least one of the appraiser's Valuation Units should not exist**

For Land Use 9 (Waterfront Residential, page 13) the appraiser fails to mention that for all three corridor segments reported to be comprising the land use are, in fact, separated from the subject line by State Highway 36.

Mr. Rex provides no explanation as to why land use conclusion is acceptable. It is my professional opinion that this conclusion is completely unacceptable for under ATF because the east half of the line has no reasonable relationship to waterfront residential due to the highway separation. Instead, the entire portions of the segment should be associated with the properties at the fence to the west.

In fact, on page 33 (second paragraph) of his Verified Statement, Mr. Rex provides a discussion consistent with my understanding that this land use unit should not exist (instead the segments making up this land use unit should have values associated with the areas to the northwest). He states, "In cases where one ATF land use is either a road, river, or other water body, the ATF value on the opposite side of the [subject] corridor is used for the segment." Simply stated, the appraiser has not correctly addressed the valuation of this land use unit within his own ATF framework.

### **F. Numerous Valuation Units seem to be Mis-Characterized**

Reference is made to the following analysis of Land Uses 2, 10, 11, 24, 25, and 29. These all seem to include segments that should be classified as part a different land use unit.

### **G. Significant errors found for Sales Data cited by appraiser**

During the course of my review analysis I checked on a limited sampling of sales cited by Mr. Rex and this uncovered several apparent errors. Reference is made to my following discussions regarding Land Uses 5, 14, 16, 17, 21, 22, and 26. It is stressed that I did not conduct an investigation of all sales cited by the appraiser; based on the results of my limited sampling one could reasonably expect to find more errors in the market data reportedly relied upon.

### **H. Timber Value is Incorrectly Included or Poorly Considered**

The appraiser has included timber value not owned by CORP and the valuation for the lack of timber rights for the Lane County and Coos County sections is poorly addressed, as elaborated upon towards the end of this report.

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### **IV. PROBLEMS AND CONCERNS REGARDING SPECIFIC PORTIONS OF APPRAISAL UNDER REVIEW**

The following presents problems and/or concerns noted about the RMI Midwest appraisal, arranged from the beginning to the end of the report.

#### **A. Scope of Work, Pages 2 and 3**

- 1) Summary Report format declared but USPAP established requirements not met (see previous review comments)
- 2) Calculation of subject areas  

ArcGIS is noted on page 2 as being used to calculate areas, yet Extraordinary Assumption No. 4 (page 43) ArcView is referenced as the source. There is no explanation or other indication how these apparent computer programs work or if there is a significant difference between them. This is an example of poor appraisal quality and detracts from the credibility of the appraisal.
- 3) The nuances and accuracy of the land area calculations are not explained. The source of the data entered into these programs is not clear and the nuances of this data source (i.e. reliability, accuracy, positives and negatives, etc.) are not explained.
- 4) It is not explained why other and perhaps more transparent sources of land size data, such as the areas provided on the Southern Pacific Company "Right-of-way and Track Maps", have not been utilized in any apparent manner.
- 5) The statement, "...and all accessible sales were inspected ...." does not provide reasonable information regarding the scope of analysis and quality of appraisal. The appraiser provides no indication what constitutes a property being "accessible", how many of the sales were "accessible", and ultimately how many of the 126 comparable sales properties were inspected. Furthermore the appraiser has stated in his Verified Statement of August 28, 2008 that he and his associate physically inspected virtually every comparable sale that was accessible (see 2<sup>nd</sup> paragraph, page 9 of Rex Verified Statement).
- 6) The RMI appraisal considers only those portions of the subject railroad line that are owned in fee, and such was based on a title study provided by Gleaves Swearington Potter & Scott LLP. A copy of this study has been provided at the end of the RMI report as "Addendum C: Title Report." I have not investigated the title report. As part of this appraisal review, I have incorporated no opinion regarding the subject property's title makeup (beyond the scope of appraisal review assignment). For the purposes of this appraisal review, I have assumed that the title reported by Mr. Rex for the purposes of his appraisal is correct.



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### **B. Subject Property Description – Size, Page 5**

The subject property is reported to contain approximately 1,987 acres, of which 233 acres is owned in less than fee, resulting in a total of 1,754 acres of fee title used to estimate net liquidation value. Of this latter figure, 162 acres is fee less other rights, and therefore it is reported that there is approximately 1,592 acres in fee. Insufficient information is provided to check for the adequacy and accuracy of the reported conclusions (conclusions are simply stated and supporting analysis is not summarized to provide sufficient understanding by reader).

### **C. Subject Property Description – Width, Page 3-5**

The variable widths of the subject property are not reported, and thereby apparently not considered. This is an important consideration for any property because real estate is a three dimensional element. It is also very important for a corridor with a highest and best use of disassembling and sale to abutting properties; width is a paramount consideration in this instance because such is a key factor in determining the subject line's potential for use as an independent parcel and/or utility to abutting areas.

### **D. Zoning/Land Use, Page 6**

The reader is referred to the previous discussion of the matter, which can be found under the review section title "General and/or Significant Problems with Appraisal Under Review" (III.C.1.a).

### **E. Market Analysis, Page 6**

The shortcomings of the market analysis provided were detailed previously in this review (see "General and/or Significant Problems with Appraisal Under Review" (III.C.1.b)). The following data has been provided to support my conclusion that the analysis provided is inadequate:

- 1) Significant portions of the subject property extend through timberlands, yet no analysis of timber and timberland market conditions is provided. For example, a declining timber market could seriously decrease the value of timber properties, just as an increasing market could increase the value. Mr. Rex does not address this key consideration.
- 2) The appraiser makes reference to the "acreage market", which is not a term known to the reviewer or common in the subject marketplace.
- 3) The detail of market trends is inadequate relative to the sales used. Only the residential market conditions for the past year have been addressed, and Mr. Rex provides a general figure of 6% for the entire subject line. Only 4% of the sales used occurred in Year 2008. Over 70 percent of the residential sales are estimated to have occurred prior to the past-year residential market trend

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mentioned by the appraiser. Even assuming that the general figure is correct, and again no source was offered, a prudent appraiser would have adjusted the comparable sales in order to reflect for this trend. Mr. Rex made no such effort. The dates of the appraiser's sales are summarize in the following table titled, "Analysis of Comparable Sales Used."

<b>Analysis of Comparable Sales Used</b>							
<b>Comparable Sales Category</b>	<b>Years 2000-01</b>	<b>Year 2004</b>	<b>Year 2005</b>	<b>Year 2006</b>	<b>Year 2007</b>	<b>Year 2008</b>	<b>Total</b>
<b>Residential</b>	0 0%	0 0%	25 38.5%	17 26%	21 32.5%	2 3%	65
<b>Acreage</b>	0 0%	1 3%	9 28%	10 31%	11 35%	1 3%	32
<b>Commercial/Industrial</b>	2 7%	1 3.5%	10 34%	9 31%	6 21%	1 3.5%	29
<b>Timberland</b>	0 0%	0 0%	0 0%	5 83.5%	0 0%	1 16.5%	6
<b>Totals</b>	2 1.5%	2 1.5%	44 33%	41 31%	38 29%	5 4%	132

The appraiser's mention of the industrial, commercial, and acreage markets appears to be relevant to only the past year, whereas while mentioning these markets he makes reference to the current residential downturn stated as occurring over the past year. Again, the majority of the sales relied upon by the appraiser occurred outside of the year prior to the date of valuation.

In summary, it is apparent that the market analysis is insufficient relative to the comparable sales relied upon by the appraiser in reaching his value conclusions.

- 4) The following table illustrates that using a single figure to characterize the market trend of residential market conditions relevant to the subject is not appropriate, whereas appreciation rates for communities along the subject line have varied considerably.

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Residential Appreciation Matrix						
Area	Closed Sales		Median Sales Price			Rolling 12-Mo.
	YTD 5/2007	YTD 5/2008	YTD 5/2007	YTD 5/2008	Change	% Change <sup>1</sup>
Greater Lane County	1,745	1,164	\$233,900	\$225,000	-3.8%	7.0%
Florence	117	76	\$230,000	\$225,000	-2.2%	-10.9%
Veneta/Elmira	86	46	\$229,300	\$222,700	-2.9%	5.9%
W Eugene	97	57	\$203,500	\$190,000	-6.6%	-12.8%
Danebo	204	140	\$217,300	\$190,000	-12.6%	-7.0%
Douglas County	464	350	\$185,000	\$170,000	-8.1%	-2.7%
North Douglas County	46	32	\$150,000	\$153,000	2.0%	9.9%
Coos County	261	196	\$185,000	\$170,000	-8.1%	-2.7%
Coos Bay	111	72	\$175,000	\$159,300	-9.0%	-0.7%
Lakeside	12	4	\$174,600	\$178,800	2.4%	4.2%

<sup>1</sup> % Change is based on a comparison of the rolling average for the past 12 months with 12 months before as presented by RMLS  
Source: RMLS Market Action Report May, 2007 & May, 2008

- 5) It is apparent that an adjustment for some of the comparable sales should have been included in the appraiser's analysis, since in two places (pages 6 and 39) Mr. Rex mentions that there is a "current downturn in the real estate market." It is the appraiser's experience that many of the comparable sales probably required adjustment for market conditions considering the market trends over the four years represented by the sales relied upon by the appraiser.
- 6) On page 40, the appraiser states that a typical purchaser would expect that land values would increase by at least 1 percent per year after the first year of sales in disposing of the subject property. There is absolutely no market data or other evidence supporting this conclusion, and it seems contradictory to the limited market trend data that has been provided by the appraiser. Furthermore, the ATF properties comprise several different property types in several different geographic markets; it is very unlikely that a single appreciation rate would be applicable for the entirety of the appraiser's analysis (if so then supporting data and analysis should be provided).

### **F. Valuation Introduction, Page 9**

- 1) The appraiser mentions that he has relied on area listings as part of his support in estimating the ATF unit values for the various land uses. However, the report includes no other evidence that area listings have been considered, and this is a significant shortcoming considering the reliance the appraiser has placed on such area listings.

He states that the listings in the subject market areas support a conclusion that there is little or no evidence that the subject ATF prices should be adjusted below the prices indicated by the comparable sales. This conclusion does not appear logical considering that listing provide only a limited view of current market

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attitudes, yet he uses them as a barometer for market conditions relevant to his sales that extend over four years prior to the date of value.

His conclusion that sales data require no adjustment for market conditions likely has a significant impact on his market value conclusion, and therefore more explanation and at least some evidence of market data support is required.

- 2) In many cases the appraiser has relied upon statistical analysis of the sales data in reaching his conclusion. There is no discussion or explanation of the benefits and pitfalls of this analysis methodology. A summary discussion should be provided for the pro's and cons in regards to sample size, the impacts of relying on raw, unadjusted market data, and the appropriateness of using the median as a barometer of market value.

There appears to be an inconsistent reliance on statistical mean and median. Land Use units 2 and 15 both consist of timber acreage and for LU2 both statistical mean and median are cited as support yet for LU15 the much lower median is apparently ignored.

Furthermore, where a sampling of market data is used, he reports on the standard deviation and coefficient of variance, yet provides no indication of how these are relevant to the analysis or considered as an indicator of the strength of market data relied upon.

### **G. Land Use 1 Valuation – Rural Residential, Page 9**

- 1) This applies to 20 segments of the subject line as delineated by the appraiser.
- 2) The appraiser cites 6 sales;
  - a. Two sales occurred in year 2005.
  - b. Four sales occurred in 2007.
  - c. Sales range in size from 6.29 to 19.20 acres.
  - d. Sale prices range from [            ] per acre to [            ] per acre.
- 3) No indication is provided as to what size range is applicable to the ATF areas (subject abutters). There is often a direct correlation between the size of properties and their price per acre. For example large rural home sites typically reflect lower prices per acre than smaller properties because of the economies of scale and the relative ratios between area in use by the home and excess area associated with agriculture or open space. Without consideration of ATF sizes a credible estimate of ATF value can not be made.
- 4) The appraiser concludes to an ATF unit value of [            ] per acre, which is extremely close to the median of [            ] per acre reflected by the sales provided. There is no sufficient explanation as to why this is a reasonable or credible conclusion. It appears very likely that the conclusion is not reasonable or credible because the appraiser seems to have simply relied the statistical analysis

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of a small sampling of sales not adequately established as comparable.

Additional the comparable data reflects a coefficient of variance of 28%, which is not explained but seems too high in reflect sufficient creditability.

### **H. Land Use 2 Valuation – Acreage (Timber), Page 10**

- 1) This applies to over 55 segments of the subject property, and therefore it appears to be a significant land use unit.
- 2) The appraiser lists 8 sales of Lane County timber properties:
  - a) These range from 17.7 to 17,045 acres in size (three are under 50 acres, one is at 682 acres, and the remaining four are over 1,700 acres). This is an extremely wide range that should at least be addressed in regards to relevance to the subject ATF areas and potential impacts in terms of the sampling approach used. One of the defining characteristics of comparable sales is that they are similar to the subject; the sales relied upon are significantly dissimilar to one another and thereby can not be sufficiently similar to the subject to rely on as a basis of valuation.
  - b) Five of the sales occurred in year 2007, two in year 2006, and one in 2005.
- 3) The appraiser mentions that the sales have a mix of maturity, density of timber, and size, yet details are not provided in regard to each sale and there is no information on how this pertains to the subject property or ATF properties to establish a basis of comparability relative to the sales.
- 4) There is no discussion of timber (versus underlying land) values and market conditions in regard to the range of sale dates. In my experience, an appraisal of timber land must separately analyze the timber and land components in order to be credible. The timber analysis must take into account the quantity and quality of the timber, and the relevant market conditions. I cannot discern that Mr. Rex has undertaken this analysis, and therefore his valuation is not reliable.
- 5) The appraiser concluded to a unit value estimate of [       ] per acre, which is very close to the statistical mean of [       ] per acre. There is no indication of why this is appropriate relative to the sale price range that is from [       ] to [       ] per acre. The relevance of the conclusion reached must be explained for the appraisal to be credible and meet the requirements of USPAP.
- 6) Nowhere in the report has the appraiser addressed why the conclusion reached for this valuation unit is substantially higher than Land Use 15 (Douglas County Timber Acreage) that was estimated to have a value of [       ] per acre. In my experience, the value difference between the timberlands in these counties should not be so different, but insufficient information is provided to understand how or why the appraiser's conclusions for these units are appropriate.

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- 7) Segment 227 is included in this section and this seems to be a significant error because in Figure 25 (page 38) the appraiser has said the area is subject to Title Exception Code 6a, which indicates the area is part of the Fern Ridge Reservoir and states "...the ATF land use is wetlands" (see footnote at the bottom of page 29). It seems the area might be better classified as part of Land Use 0 (Road/River/Water) or 11 (Wetlands).

### **I. Land Use 3 Valuation – Rural Residential (Segment 20), Page 10**

- 1) The appraiser's value conclusion relies on only one dated sale that occurred in 2005.
- 2) The appraiser states, "One reason for a lower unit value is that the river results in irregular-shaped parcels" (for this Land Use 3 unit). Insufficient market data or explanation is provided to understand how, why, and to what extent irregular shape resulting from a river has an impact on market values. Without such explanation a reader can not understand the appropriateness of the appraiser's conclusions and compare this portion of the valuation with others in order to judge the consistency of the analysis and conclusions made by the appraiser.
- 3) The single sale that is cited as being used for this valuation unit was also included in (used for) Land Use 1. This begs the question - If Land Use 3 is not the same as Land Use 1, then why is Sale 2005-071466 used for both valuation units? No analysis or explanation is provided in regard to this issue.
- 4) It seems inconsistent that this land use unit does not have a premium for its river frontage, where elsewhere in the analysis water frontage properties are concluded to have a premium (see Land Use 18). It is apparent that Segment 20 has river frontage (resulting in irregular-shaped parcels). Insufficient explanation is provided.
- 5) The single sale cited reportedly sold in year 2005 at [            ] per acre, but a conclusion of [            ] per acre is reached by the appraiser. No explanation is given as to why a higher value (rounding up) is warranted. The levels of appraisal analysis and reporting are grossly insufficient in regards to standard appraisal practices.

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### **J. Land Use 4 Valuation – Flood Plain, Page 11**

- 1) The appraisal says that Land Use 1 (Rural Residential) sales show that the forested river floodplain has the same unit value of [ ] per acre (presumably this is a mistake, and Land Use 2 was meant to be mentioned).
- 2) There is absolutely no discussion or the slightest indication how the Land Use 2 market data supports a value conclusion of [ ] per acre for this land use unit.
- 3) There is insufficient information or explanation of rationale why Land Uses 2 and 4 have been differentiated in terms of land use units. If they have the same market value, then it seems reasonable to expect them to be considered in the same land use unit. Insufficient information is provided to understand the need for distinction, if any.

### **K. Land Use 5 Valuation – Swiss Home Residential, Page 11**

- 1) The value conclusion reached for this land use unit is based on only one sale in the Swiss Home area (Sale 2007-066252). This sale occurred in September 2007, and Mr. Rex indicates the property contained 6.78 acres to reflect a price of [ ] per acre.

However, the sale information used by the appraiser is wrong. Lane County and RMLS records show the property contained 7.05 acres, and therefore a price of [ ] per acre is indicated. Furthermore the property was improved with a single-family home and is accessed from a gravel cul-de-sac, which does not appear to have been considered by the appraiser. These factors would command a premium and make the property less relevant as a comparable sale. The appraiser should have discussed these characteristics, and adjusted the price per acre applied to the subject segments.

- 2) The sale cited for this valuation unit was also used as part of the valuation support for Land Use 1. No explanation was provided why this sale is a good indicator for both Land Use units 1 and 5.
- 3) The appraiser's conclusion of this valuation unit is rounded up to [ ] per acre, which seems directly inconsistent with his conclusion that the residential market has had a downward trend of 6 percent over the last year.

### **L. Land Use 6 Valuation – Swiss Home Commercial, Page 11**

- 1) The appraiser characterizes this land use unit as follows:

“Minor commercial ATF land use in Swiss Home is intermixed with the town’s residential uses and shows little difference in value. Accordingly, the unit value is based on the same sale used in Land Use 5. Therefore, the estimated ATF unit value is [ ] per acre.”

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- 2) The appraiser has provided no credible market evidence or other data supporting his statement that there is little difference in value between the town's residential and commercial uses. As a general matter, I believe that it is completely unorthodox to equate commercial and residential, and doing so requires a full explanation of the reasoning that Mr. Rex has not even attempted to provide.
- 3) There is an essentially a compounded error, where he has relied on the prior Swiss Home residential valuation analysis, which was found to be inadequate and erroneous.
- 4) It is completely inappropriate for the appraiser to provide no credible evidence of commercial land sales relevant to this area or broader general market.

### **M. Land Use 7 Valuation – Swiss Home Industrial, Page 12**

- 1) The appraiser mentions industrial/commercial sales as ranging from [ ] per acre to [ ] per acre for the three-county area represented by the subject. This sales prices of the comparables establishes an extraordinary range of 255 percent and no explanation is provided on how this data might be applicable to the subject land use unit.
- 2) The appraiser concludes to a value of [ ] per acre, which is significantly below the questionable range cited by the appraiser. Insufficient analysis or support of rationale is provided in regard to the appraiser's conclusion.
- 3) No actual sales of industrial property are cited by the appraiser. It appears to be completely inappropriate for the appraiser to provide no credible evidence of industrial land sales relevant to this area.

### **N. Land Use 8 Valuation – Industrial, Page 12**

- 1) The appraiser summarizes this land use unit as, "This ATF land use is rear industrial, in a very small community with poor access."

What constitutes rear industrial is not explained. Once again, no indication of property sizes for relevant ATF lands is provided. Other key physical characteristics such as utilities also are not discussed, similar to previous and following land use units.

- 2) No specific sales are given to support the appraiser's value conclusion at [ ] per acre. Instead, the appraiser references the limited discussion provided regarding Land Use 7 and states that the estimated unit value for Land Use 8 is at the low end of the industrial land prices nationwide.

There is no source cited for the range of nationwide industrial land prices that are reportedly relied on. There is no indication of how the prices of industrial land on a nationwide basis are applicable to this land use unit and support the appraiser's conclusion of [ ] per acre. This is an unacceptable appraisal practice



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and/or appraisal reporting, based on the scope of work established by the appraiser.

### **O. Land Use 9 Valuation – Waterfront Residential, Page 13**

- 1) This land use unit is described as involving river frontage residential sites in and around Mapleton.
- 2) Three sales are cited as being utilized. All of these occurred in year 2006, and no adjustment for market conditions has been made (as noted earlier, insufficient analysis was provided to know whether or not an adjustment is warranted).
- 2) The appraiser does not mention that for all three segments comprising the land use, the waterfront residential sites reported to be at the fence are separated from the subject line by State Highway 36.

There is no explanation indicating why this is acceptable in this instance. It is my understanding that this is completely unacceptable for ATF valuation, whereas the east half of the line has no reasonable relationship to waterfront residential due to the highway separation, and the entire portions of the segment should be associated with the properties at the fence to the west.

In fact, on Page 33 (second paragraph) Mr. Rex provides discussion consistent with my understanding that this land use unit should not exist (instead the segments making up this land use unit should have values associated with the areas to the northwest). He states, "In cases where one ATF land use is either a road, river, or other water body, the ATF value on the opposite side of the [subject] corridor is used for the segment." Simply stated, the appraiser has not correctly addressed the valuation this land use unit within his ATF framework – it is apparent that this Land Use unit should not exist within the context of the appraiser's analysis.

### **P. Land Use Valuation 10 Valuation – Mapleton Residential, Page 13**

- 1) The sales cited range in size from 0.48 to 1.46 acres but there is no mention of sizes relevant to ATF properties and how the sales are applicable. My analysis indicates that the cited segments abut land ranging from 0.63 to 40 acres in size, and the majority of abutting properties are over 2.5 acres in size. Therefore it is not apparent that the sales data relied on are particularly relevant.

There is often a direct correlation between the size of properties and their price per acre. For example large rural home sites typically reflect lower prices per acre than smaller properties because of the economies of scale and the relative ratios between area in use by the home and excess area associated with agriculture or open space. Without consideration of ATF sizes a credible estimate of ATF value can not be made.

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- 2) Segments 80NW and 81NW do not appear to abut residential lands. It is apparent that these segments abut areas zoned by Lane County as Rural Industrial (RI) or Forest (F1). Furthermore, these abutting areas appear to contain upwards of 35 acres. The market data cited for this land use unit do not seem to be remotely applicable to Segments 80NW and 81NW.
- 3) The market data ranges in price from [ ] per acre to [ ] per acre. It reflects a standard deviation of [ ] and a coefficient of variance of 52 percent, both of which indicate that there is not a high degree of reliability for the sampling. Nonetheless, the appraiser has relied on the arithmetic mean of [\$76,400] per acre in concluding to the estimated unit value of [ ] per acre for the subject; there is no explanation why the mean is applicable in this instance.

### **Q. Land Use 11 Valuation – Wetlands, Page 14**

- 1) Two sales occurring in year 2005 were relied upon by the appraiser in reaching his estimated value of [ ] per acre for this land use unit.
- 2) The appraiser states that the two sales are primarily wetlands but have more uplands than the subject segments that are classified as wetlands. There is insufficient data provided to understand the extent and characteristics of the wetlands and whether he is referring to the subject segments (which is stated) or is referring to the at-the-fence abutters (which has been his premise for the majority of the appraisal).
- 3) Many of the segments identified as constituting this Land Use unit are misconstrued since the ATF areas are public waterways. These segments should be valued relative to the areas on the opposite side of the corridor, as the appraiser has stated on Page 33 (second paragraph).
- 4) The two sale properties contain 2.48 acres and 9.95 acres. The relevant ATF properties for Segments 88 and 96SE/97SE contain over 200 and 500 acres, respectfully. It is obvious that the comparable sale properties appear to be very different in nature than the mentioned ATF properties; no analysis or explanation has been provided to help the reader understand why these sales are applicable. It is likely that reliance on these significantly smaller properties has led to an inflated valuation, whereas smaller properties typically reflect higher prices per acre than significantly larger properties.

### **R. Land Use 12 Valuation – South Lane Rural Residential, Page 14**

- 1) The appraiser cites reliance on three sales, all of which occurred in 2006 and have not been adjusted for market conditions.
- 2) The indicated prices reflected by the sales range from [ ] per acre to [\$54,864] per acre. The standard deviation is [ ] per acre, and the coefficient of variance is 54 percent; this indicates that there is not a high degree of

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reliability established by the limited sampling of sales data. No analysis in this regard has been provided by the appraiser.

- 3) The appraiser places most weight on Sale 2006-041793, because it is nearly across the fence of subject segment 93. There is no discussion or explanation how this relates to the other three segments grouped into this land use. Furthermore, there is no indication that size has been considered; it is likely that this sale establishes the low end of the price-per-acre range, because it is largest in size and this could have significant implications on the analysis of the market data relative to this land use unit.

### **S. Land Use 13 Valuation – Pasture, Page 15**

- 1) The appraiser relies on two sales and concludes to a unit value of [ ] per acre, which essentially is the median price established by provided market data. The limited number of sales constituting this sampling relied upon for the statistical analysis probably has implications on the appraiser's conclusion.
- 2) The two sales utilized contain 4.53 acres and 17.69 acres. This compares very poorly with the size of the abutting properties, which appear to me to consist of a 0.31 acre parcel (owned by SPRR) and several properties over 40 acres in size.
- 3) The appraiser states that the two pastureland sales shown indicate a unit value of [\$5,000] per acre, but there is absolutely no explanation of how or why this is the case and is applicable to the indicated portion of the subject.

### **T. Land Use 14 Valuation – Commercial (Rural Waterfront Commercial), Page 15**

- 1) The appraiser clearly states that this ATF land use is Rural Waterfront Commercial. He then states he has relied on rural residential sale 2007-025483 ([ ] per acre) because it is located between the two segments of the subject constituting this land use unit. There is no discussion or other indication as why a rural residential sale with water frontage is applicable to this commercial land use unit.
- 2) The appraiser states, "The subject segment is approximately 25 percent superior [to Sale 2007-025483] because of location, its amount of water frontage, and land use; therefore, the ATF unit value estimate is [\$ ] per acre." In my opinion, this is grossly inadequate appraisal practice, because there is no apparent connection between rural residential land values and rural commercial land values, even where both share waterfront amenity. In my experience, there typically would be very little if any association between the land values for these types of properties. If there is some in this instance, then it certainly should be explained by the appraiser. Because he has not done so, his conclusion is not credible.
- 3) Significant details of the cited sale are incorrect. Mr. Rex shows this as containing 3.49 acres but Lane County records list this as 4.35 acres. Using the apparently correct larger size indicates a price of [ ] per acre (vs. the [ ]/acre

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reported by RMI). Furthermore, RMLS records indicate the property includes a mobile home. For details the reader can refer to the data provided as Review Addenda Section C.

### **U. Land Use 15 Valuation – Acreage (Douglas County Timber), Page 16**

This is a significant land use unit, as it regards at least 30 segments of the subject property.

- 1) Ten sales stemming from years 2005 to 2007 were relied upon by the appraiser.
  - a) Five of the sales involved properties less than 100 acres in size, and these reflect prices ranging from [     ] to [     ] per acre (an extremely wide range).
  - b) Four of the sales range in size from 158 acres to 431 acres, and they reflect prices from [     ] per acre to [     ] per acre (a fairly wide range).
  - c) One sale involves a property containing 3,647 acres and indicates a price of [     ] per acre.
  - d) Overall, the sales involved properties ranging from 22.09 acres to 3,647 acres. This extremely wide range is likely to be at least partly responsible for the wide range of indicated prices from [     ] to [     ] per acre; however, the reason for the wide range in property sizes, and factors behind the wide range in indicated prices per acre, are not addressed by the appraiser. There is no mention of the size of abutting properties to add perspective relative to the sales.

One of the defining characteristics of comparable sales is that they are similar to the subject; it is apparent from the extraordinary size range of the comparable sales the they are significantly dissimilar to one another and thereby can not be sufficiently similar to the subject to rely on as a basis of valuation.
  - e) There is no discussion of timber (versus underlying land) values and market conditions in regard to the range of sale dates.
- 2) This sampling of sales is reported to have a standard deviation of [     ] per acre and a coefficient of variance at 85 percent. The latter indicates that there is a low degree of reliability or conformity established by the sampling of market data relied upon.
- 3) The appraiser has given the most weight to the arithmetic mean of the sales presented; no explanation is given as to why this is worthy of the most weight or worthy of any weight at all.
- 4) There is no indication why the appraiser has not relied on the lower median price ([     ] per acre) that is established by the sales. This appears to be

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inconsistent with the previous timberland unit valuation (Land Use 2), where both mean and median were considered by the appraiser in reaching his conclusion.

- 5) There is no mention or indication (reconciliation) by the appraiser as to why the value conclusion for this land use unit ([ ] per acre) is so much less than that reached for the previous timber land unit (Land Use 2, at [ ] per acre).

### **V. Land Use 16 Valuation – Industrial Rural, Page 16**

- 1) The appraiser has simply relied on one sale that occurred in year 2006; as noted previously, there is insufficient data to understand if a market condition adjustment is warranted to the sale that occurred over two years prior to the date of value.
- 2) It appears that this sale has no relationship to the subject segment from the standpoint that the site of Sale 2006-5915 is listed on page 48 of the report as an acreage comparable sale, which throughout the report is primarily used for indicating timberland or pasture values. This sale is not included on page 49 under the list of commercial/industrial comparable sales, which appears to be applicable to this land segment. This confusion could be avoided if the appraiser included typical sale information such as zoning.
- 3) The sale property contains 78.5 acres, of which 35 acres are characterized as uplands. There is no indication of how usable the uplands are, how this compares to the subject segment in terms of utility, and how it compares to the subject segment in terms of size. Without any reconciliation of these issues, it cannot be reasonably relied upon as a comparable sale.

### **W. Land Use 17 Valuation – Rural Residential (Douglas County), Page 17**

- 1) For the valuation analysis of this unit, the appraiser has simply stated that most weight is placed on nearby Sale 2005-27043, which apparently sold at a price of [ ] and reflects a value of [ ] per acre. Mr. Rex then rounds up for his conclusion of [ ] per acre with insufficient consideration of the market conditions existing since the sale occurred near 2½ years prior to the date of value.
- 2) Mr. Rex shows this sale contains 0.29 acre, which is inconsistent with Douglas County records and therefore appears to be the wrong size resulting in the wrong price per acre. The size reported by the County is 0.21 acre, which applied to the [ ] sale price results in an indication of [ ] per acre. For details the reader can refer to the data provided as Review Addenda Section D.
- 3) There is an indication that other sales were considered, but no mention of specific sales and how they apply is made.
- 4) The sale property contains 0.21 acre, which compares very poorly and possibly not at all with the ATF properties. My investigation indicates that the relevant abutters

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range in size from 0.44 to 8.52 acres (with one property being a portion of a 55+ acre holding with farm/forest zoning).

- 5) The cited sale is the same one used later for Land Use 21, which is stated as applicable to Segment 26NW (ATF area of 4.35 acres apparent). There is no reconciliation as to why this sale is applicable to both land use units. Perhaps the land use units could have been combined into a single land use unit, but there is insufficient data provided to make any judgment in this regard.

### **X. Land Use 18 Valuation – Rural Residential (Waterfront, Douglas County), Pg. 17**

- 1) The appraiser states that he has placed most weight on one sale that occurred in 2007 and involved a 1.76-acre property indicating a price of [ ] per acre. It is insinuated that other sales data has been relied upon, but there is no mention of any other specific sales for the reader to consider in judging the reasonableness of the conclusion reached.
- 2) The only physical characteristic about the sale property that is provided by the appraiser is size, and he has failed to indicate the size of abutters as an indication of the appropriateness of this sale. There is often a direct correlation between the size of properties and their price per acre. For example large rural home sites typically reflect lower prices per acre than smaller properties because of the economies of scale and the relative ratios between area in use by the home and excess area associated with agriculture or open space. Without consideration of ATF sizes a credible estimate of ATF value can not be made.

My investigation indicates that the relevant abutting properties contain 0.27 acre and 10.40 acres, which appears to compare poorly with the 1.76 acre sale property.

Furthermore, other characteristics of the sale property should be provided for consideration and/or determination of comparability with the subject. The appraiser's analysis has made no apparent consideration of key characteristics or amenities such as access, nature of river front (i.e. deep water), utilities, or topography.

- 3) The market data analysis provided is insufficient for the reviewer to judge the appropriateness of the appraiser's conclusion of [ ] per acre for this valuation unit.

### **Y. Land Use 19 Valuation – Commercial (Reedsport, Douglas County), Page 17**

- 1) Mr. Rex cites reliance on four sales that occurred in years 2005 and 2006 (none within one year of the date of valuation).
- 2) The appraiser has not provided sufficient data and analysis to allow me to verify the appropriateness of the conclusion reached.

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### **Z. Land Use 20 Valuation – Commercial (Reedsport, Douglas County), Page 18**

- 1) The appraiser states that, "This subject segment is inferior to the segment above." There is no indication of how or why, or to what degree that this subject segment is inferior to Land Use 19, which makes it virtually impossible for the reader to assess the appropriateness of the conclusion for this valuation unit relative to the prior valuation unit.
- 2) Most weight is placed on two sales that occurred in year 2006, and the appraiser's conclusion is slightly below the mean. There is no indication why the appraiser's conclusion of [ ] is appropriate relative to the sales and the subject segment. Due to the absence of any explanation, Mr. Rex's conclusions cannot be judged as being reliable or credible.

### **AA. Land Use 21 Valuation – Residential (Reedsport, Douglas County), Page 18**

- 1) The nature of the subject segment is not discussed, so it is unclear how it is in relation to the Land Use 17 unit. This is of significance because the appraiser places most weight on the same apparently incorrect sale data (refer to LU 17 review discussion).
- 2) The ATF property relevant to this land use unit contains 4.35 acres, and in this regard seems to have no meaningful similarity to the 0.21 acre sale cited as valuation support.

There is often a direct correlation between the size of properties and their price per acre. For example large rural home sites typically reflect lower prices per acre than smaller properties because of the economies of scale and the relative ratios between area in use by the home and excess area associated with agriculture or open space. Without consideration of ATF sizes a credible estimate of ATF value can not be made.

For this Land Use unit the reliance on a single sale involving a significantly smaller property has probably led to an erroneously high value conclusion.

- 3) The appraiser has reached the same conclusion of [ ] per acre for Land Use units 17 and 21. There is no indication as to how or why this is reasonable.
- 4) Again, the appraiser infers that other market data was considered, but no specifics are cited.

### **BB: Land Use 22 Valuation – Trailer Park (Reedsport), Page 18**

- 1) The appraiser states, "No recent sales of campsite/trailer park sites were obtained." It is not clear that the appraiser conducted a search for such, and if so, the extent of such a search. It is not clearly stated that no relevant sales were found to exist.

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- 2) The appraiser provides no discussion of the property characteristics relevant to the ATF, which apparently consists of a trailer park. My investigation indicates that the relevant abutting property contains 20.23 acres, which seems to obviously compare very poorly with the 0.21 acre sale property cited.
- 3) This segment is differentiated from Land Use 21 and therefore presumably regards a different property type. Nonetheless, for this land use unit Mr. Rex relies mainly on the same sale used for both Land Units 17 and 21. There is no discussion of why this is reasonable or appropriate. For details about the erroneous sale data relied upon for this unit the reader should refer to the review discussions pertaining to Land Units 17 and 21.

### **CC: Land Use 23 Valuation – Rural Residential (Douglas County), Page 19**

- 1) There is only one sale cited and apparently this was relied upon because it is in the area of the segments comprising this land use unit. Typically location alone is not a sufficient characteristic and does not preclude consideration of other market data.
- 2) This sale occurred in year 2005 and, once again, no adjustment has been made for market conditions relative to the intervening three years between the date of sale and date of value.
- 3) The sale property contained 5.74 acres, which compares poorly with many abutting areas (which appear to range from 0.44 to 14+ acres).
- 4) There is no mention or indication why the valuation conclusion for this unit ( [per acre] ) is so much lower than that reached the appraiser for Land Use 17 ( [per acre] ). This is probably due to the difference in land size between the sales, but there is no indication provided by the appraiser of why the value difference is appropriate.

### **DD: Land Use 24 Valuation – Acreage (Timber, Coos County), Page 19**

- 1) The appraiser states that most weight is placed on one sale that occurred in April 2004 (over four years prior to the date of value) because, "It is in the area of the subject segments and is most comparable." Typically location alone is not a sufficient characteristic and does not preclude consideration of other market data.
- 2) The appraiser has not provided any data or analysis in regards to the timber value market conditions existing between the over four-year-old sale and the subject date of value.
- 3) There is no indication that the appraiser has considered the nature or makeup and value of any timber that may have been on the sale property at the time of sale. Such consideration is typical and paramount for reasonable consideration of timberland sales as part of the appraisal process.



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- 4) The sale property contains 6,035 acres, and there is no indication how this compares or applies to the ATF properties of pertinence. My analysis indicates that there is very limited comparability to the subject property, whereas the properly characterized abutting areas appear to contain less than 130 acres.
- 5) The portions of the subject identified as Line Segments 152 and 153NW do not appear to be applicable to this Land Unit, as the appraiser has valued them. Both are located in the City of Lakeside. Segment 152SE consists of a 41 acre mobile home park zoned Marine Commercial (MC) and Rural Residential (RR). Segments 152NW and 153 NW abuts a 9 acre property that appears to have little if any timber in the vicinity of the subject (primarily pasture area zoned General Residential (GR)).
- 6) The appraiser has reached a conclusion of [ ] per acre for this land use unit, which is the same as that reached for Lane County (Land Use 2) and much higher than reached for Douglas County (Land Use 15). Again, there is no reconciliation by the appraiser in regards to these conclusion differences.
- 7) Based on the provided data, it is apparent that the market data relied upon is not reliable, certainly is not entirely suitable, and the appraiser's value conclusion reached for this land use unit is not credible.

### **EE: Land Use 25 Valuation – Campsite, Page 19**

- 1) The appraiser states, "No recent sales of campsite/trailer park sites were obtained." It is not clear that the appraiser conducted a search for such, and if so, the extent of such a search. It is not clearly stated that no relevant sales were found to exist.
- 2) The appraiser states that the segments comprising this land use unit were, "...valued at the same price as for residential development derived from single-family-residential lot prices. Accordingly, the estimated unit value is [ ] per acre."
  - a) I do not understand the statement, "...same price as for residential development derived from single-family-residential lot prices." It may be clearer what the appraiser's meaning is if specific sales data were cited as a source of his conclusion, but this is not the case.
  - b) The appraiser does not provide examples of any specific residential lot sales, which leads me to presume that he is referring to prior residential market data; it certainly is not clear.
- 3) There is no indication or analysis why single-family residential lot prices derived from residential development prices are applicable to this land use that is characterized as "Campsite."

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- 4) Segment 153SE applies to a 41 acre mobile home park zoned Marine Commercial (MC) and Rural Residential (RR). The classification "Campsite" does not seem appropriate.
- 5) The appraiser's conclusion of [ ] per acre is not credible, based on the market data and analysis provided.

### **FF. Land Use 26 Valuation – Lakeside Residential, Page 20**

The eight sales cited by the appraiser have been investigated to the extent that County records have been obtained.

- 1) Several of the sales have incorrect data or arithmetic calculations. For supporting details the reader can refer County data regarding certain sale properties that has been provided as Review Addenda Section E.
  - a. For Sale 2005-10049 the appraiser reports a price of [ ] per acre. However, my calculation indicates the price per acre is of [ ] ([ ] Sale Price ÷ 0.33 Acre = [ ]/Acre).
  - b. For Sale 2005-10053 the wrong size is reported by the appraiser. Apparently an indicated sale price of [ ] per acre should have been relied upon by the appraiser ([ ] Sale Price ÷ 0.98 Acre = [ ]/Acre). Curiously the appraiser has not mentioned or relied on the apparent 2008 sale of one of the two parcels involved in Sale 2005-10053.
  - c. Sale 2005-17448 consists of two lots that were separately resold in 2007 and 2008 at apparent prices of [ ] ([ ] to [ ] per acre); these were not mentioned by the appraiser and therefore may have not been considered.
  - d. For Sale 2005-7710 the appraiser reports an indicated price of [ ] per acre. However, the appraiser reports a significantly wrong size of 1.44 acres, as reported by the County. The sale actually seems to indicate a significantly lower price of [ ] per acre ( [ ] Sale Price ÷ 1.44 Acre = [ ]/Acre).
- 2) There is insufficient analysis to understand or support the appraiser's value conclusion. The eight sales relied on range in price from [ ] to [ ] per acre, the mean price is [ ] and the median [ ]. There is no analysis or reconciliation relative to the appraiser's conclusion of [ ] per acre.

### **GG. Land Use 27 Valuation – Acreage (South of Lakeside, Coos County), Page 20**

- 1) The appraiser has provided 8 sales ranging from years 2005 to 2007 and involving properties containing 0.53 acres to 2.52 acres. These range in price from [ ] to [ ] per acre.

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- 2) The appraiser has concluded that the arithmetic mean of this data sampling is the best indication of value, but no reasoning for this conclusion has been provided. Therefore, it is not clear that the conclusion is reasonable, reliable, or credible.

### **HH. Land Use 28 Valuation – Acreage (Coos County), Page 21**

- 1) The appraiser provides no analysis or summary of the characteristics making up the land use unit. It is stated that his ATF unit value conclusion is based on two potentially residential development sales, which infers that the ATF properties have residential development potential, but how and to what extent is not even hinted at.
- 2) The two sales relied upon occurred in year 2005 and involved properties containing 5.32 and 8.07 acres. There is no indication of how this is applicable to the ATF areas and/or how market conditions in 2005 relate to current market conditions.
- 3) The insinuation that the two cited sales have residential development potential could mean anything from one unit, to high-density development potential. In the appraisal of residential development property, it is typical if not mandatory to consider key property characteristics such as zoning, likely development density, cost for infrastructure, etc. This analysis does not appear to have been provided relative to the sales or the ATF areas.
- 4) There is no meaningful indication how two sales occurring in 2005, with prices equating to [ ] per acre and [ ] per acre, leads the appraiser to a subject market value conclusion of [ ] per acre.
- 5) The analysis provided is grossly substandard. It does not appear to be USPAP compliant, and certainly does not result in a credible conclusion. Also, it is not clear if, how, or to what extent the market data is applicable to the subject property.

### **II. Land Use 29 Valuation – Commercial (Coos County), Page 21**

- 1) The appraiser cites two sales involving the same seller, occurring in 2005 and 2006. The sales indicate prices of [ ] per acre and [ ] per acre.
- 2) The sale properties contain 1.75 acres and 2.73 acres. There is no indication how this compares to the subject ATF elements.
  - a. My analysis indicates that Segment 167NW relates to a 2.33 acre parcel improved with a house and zoned Recreation and Forest. This does not seem to constitute a commercial property as categorized by the appraiser.
  - b. It is apparent that Segment 193 pertains to a 12.95 acre parcel (significantly larger than the sale properties).
- 3) The provided analysis appears to defy basic logic. Essentially stated is the sale closest to the subject sold in October 2005 for [ ] per acre and due to the

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close proximity the appraiser has reached the conclusion that the high end of the range set by the two sales is appropriate.

- a. Typically an appraiser has market data bracketing the subject property in terms of utility and thereby value. In the unusual situation where an appraiser estimates that a conclusion outside of the range established by the market data is warranted, then considerable analysis and data supporting the conclusion is required.
  - b. Location is an important element of comparability, but it certainly is not an overriding factor at face value. A diligent appraisal analysis would have considered other property characteristics such as size, corner versus interior lot orientation, availability of utilities, traffic, exposure, accessibility, etc.
- 4) The conclusion reached for this valuation unit does not appear to be credible or USPAP compliant.

### **JJ. Land Use 30 Valuation – Industrial, Page 22**

- 1) No sales providing a basis for the appraiser's conclusion are directly cited.
- 2) The complete extent of data analysis provided by the appraiser is as follows:

“This unit value is based on the size of the ATF parcel, its location, and the industrial sales obtained.”

This does not seem to meet USPAP's definition of a summary report.

This is the only place I found where Mr. Rex indicates that the size of ATF properties have been considered, however the size and other relevant property characteristics should have been provided for comparison to market data and other subject segments.

### **KK. Land Use 31 Valuation – Industrial in Noti and Veneta, Page 22**

- 3) The appraiser lists 7 sales that reflect an over 900% range in regards to prices per acre (from [ ] to [ ]) and over 1600% in terms of size (from 1.54 to 25.11 acres). One of the defining characteristics of comparable sales is that they are similar to the subject; the sales relied upon are significantly dissimilar to one another and therefore it seems highly unlikely that they are sufficiently similar to the subject to rely on as a basis of valuation. Simply put, insufficient information is provided by the appraiser.
- 4) The appraiser highlights four sales given consideration. This is confusing as one of these reflects a price three time greater than the others and it is not stated how the other sales listed were considered.
- 5) The appraiser has not addressed differences between the communities of Noti and Veneta. The comparable he has given most weight (Sale 2005-020178) is in Noti

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and there is explanation or other reasonable indication as to how or why the Noti sale relates to Veneta.

- 6) There is no explanation why or how industrial land values are the same between the unincorporated community of Noti and the City of Veneta. There certainly are obvious differences that would support a value difference, such as proximity to Eugene, community size, amenities, etc. Mr. Rex has concluded that residential land values are worth much more in Veneta than near Noti (compare Land Use units 34 and 36); it may be likely that industrial values follow a similar trend.
- 7) The insufficient analysis discussion precludes me from concluding that the appraiser has produced a credible or reliable conclusion.

### **LL. Land Use 32 Valuation – Cropland, Page 23**

- 1) As the extent of his valuation analysis Mr. Rex simply lists three sales and offers the following as his analysis.

“Given the location of the ATF land uses and the relative soil productivity of the ATF land uses, the estimated ATF unit value is [            ] per acre.

- 2) The appraiser’s analysis amounts to a statement that is far short of the Summary Report standards established by USPAP. As such my ability to review the analysis is severely limited.
- 3) The appraiser should have described the nature of the ATF lands, including size, access, and soil capabilities. The comparable sales data should also include these details to establish suitability as price indicators.

### **MM. Land Use 33 Valuation – Cropland with Road Frontage, Page 23**

- 1) The appraiser has once again provided insufficient information regarding the ATF parcels, the comparables and his valuation analysis. The reader simply can not adequately judge if the value conclusion is reasonable and consistent with the Land Use 32 conclusion.
- 2) The data and related value conclusion of Mr. Rex appear dubious since 3 of the 6 sales listed were those relied on for the previous valuation unit (L.U. 32).
- 3) Mr. Rex has relied on the arithmetic mean without explaining its merits in this instance. The fact that the data reflects a coefficient of variance is 35% appears to make his reliance on the mean dubious.
- 4) The appraiser states his conclusion of [            ] per acre on page 23 but does not use this figure in calculating the subject value. Instead he has calculated the subject value using a value of [            ] per acre for Land Use 33; reference is made to Subject Segments 208NW, 209NW, 210NW, and 211NW on Figure 25 (page 37).

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### **NN. Land Use 34 Valuation – Rural Residential Between Noti and Veneta, Page 24**

- 1) Mr. Rex provides six sales but essentially relies on the mean and median of three of them. There is no indication why the three main sales are worthy of being given the most weight and why other sales were cited but not given as much weight. This is inadequate appraisal practice relative to the summary level of reporting identified by the appraiser.
- 2) There is no indication how the cited sale data is comparable to the subject ATF areas. For starters the sizes of ATF areas are not considered. Other key aspects of comparability that appear to be ignored are zoning, access, topography, utilities, and location. There is not enough information for the reader to reasonably judge that the data relied on is suitable and to discern if the appraiser has conducted a reasonable appraisal analysis.
- 3) An inconsistency of value conclusions reached by Mr. Rex is apparent. His conclusion for this Land Unit (located at Subject Mile Post 664+) was [ ] per acre. Land Unit 1 (Rural Residential) starts only 5 miles west of L.U. 34 (on the other side of Noti at M.P. 669+); none-the-less Mr. Rex estimated the L.U. 1 land value at [ ] per acre.

Furthermore, he concluded to a value of [ ] per acre for Land Use 38 (Rural Residential, East of Veneta). One likely value trend would be for rural residential values to decrease with distance from Eugene; this is exemplified by Mr. Rex's conclusions between L.U. 38 and 34 but not between L.U. 34 and 1.

More analysis discussion and reconciliation analysis should have been provided for the reader of the report to understand why the value differences are justified and to establish that the appraiser has conducted a thorough and adequate appraisal.

- 4) This valuation can not be determined to be reliable or the conclusions credible due to the insufficient amount of data and analysis discussion supplied.

### **OO. Land Use 35 Valuation – Veneta Commercial, Page 25**

- 1) This portion of the appraiser's analysis is flawed in several important ways that leads to a completely unreliable value conclusion.
- 2) The appraiser does an inadequate analysis of the Veneta Greenway zoning overlay. He has not provided sufficient discussion of the purpose and restrictions of the overlay. The Greenway overlay is intended to provide open space and more intense uses are generally prohibited, based on my understanding from the City zoning ordinance and discussions with Brian Issa, Community Services Director for the City of Veneta. Reference is made to an email from Mr. Issa that I have provided as Addenda Exhibit F.

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- 3) Mr. Rex states that "If the corridor were disassembled, the Greenway designation would be inappropriate unless the Town of Veneta purchased the property." This is a bold departure from the apparent reality of the situation established by the City's existing zoning and planning and the appraiser has provided no support or rationale for the his position. For the appraisal to be credible the appraiser's needs to provide a factual basis for his conclusion that the Greenway overlay should be essentially disregarded or his action should be established as a justifiable extraordinary assumption or hypothetical condition.
- 4) The appraiser makes an unsubstantiated claim that the provided CORP sales show the ATF subject area has significant value. He does not indicate the extent of Greenway overlay on the sale properties or when the overlay was adopted for the properties relative to the dates of sale. The newspaper article provided as Addenda Section G establishes that the two CORP to Larson properties did not have the Greenway overlay when purchased and that the market recognizes that Greenway designated properties are undevelopable.
- 5) Mr. Rex provides six sales but relies primarily on three of them. There is no indication why the other sales were cited or how they were utilized. Also the appraiser has not explained why his conclusion at the high-end of the three CORP sales is most suitable. The analyses and reporting is insufficient to be considered reliable or credible.

#### **PP. Land Use 36 Valuation – Veneta Single-Family Residential, Pages 25-26**

- 1) The analysis of the subject property is virtually non-existent and such is need to judge the comparability of the sales and adequacy of the value conclusion. The appraiser should have provided details about zoning relevant to the ATF properties. Also, size and development capabilities of the ATF properties need to be addressed.
- 2) The comparable sales illustrate the importance of size and indicate that other factors are also indicative of value in the market. The sales clearly suggest that size is an important issue, whereas the 0.14 and 0.16 acre sales indicated prices of [ ] and [ ] per acre (respectively), versus prices of [ ] and [ ] per acre for the 1.0 and 1.11 acre properties. If ATF properties are generally an acre or greater than a conclusion towards the low-end of the range might be more reasonable, and vice-versa. Therefore the analysis and conclusions are inadequate and not creditable.
- 3) The fact that the sales indicate a 45 percent coefficient of variance indicates that the data is not similar or reliable. This should have been addressed by the appraiser to lead to credible conclusion.

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- 4) Regarding Greenway overlay considerations, reference is made to my discussion of Land Use 35.

### **QQ. Land Use 37 Valuation – Veneta Residential Development, Page 26**

- 1) The data and analysis for this valuation unit is critically lacking in many regards.
- 2) The analysis of the relevant portions of subject property is virtually non-existent and such is needed to judge the comparability of the sales and adequacy of the value conclusion. The appraiser should have provided details about zoning relevant to the ATF properties. A typical and fundamental consideration when appraising development properties is the allowed density and this is not addressed anywhere in the appraisal; as example of importance, a property allowing 1 unit per acre will typically reflect much less per acre than a property with potential of 12 units per acre. Also, size of the ATF properties need to be addressed.
- 3) The appraiser has only provided one comparable as the basis of his conclusion. This should be analyzed in terms of the issues mentioned above and then compared to the subject to determine suitable and support conclusions.
- 4) Regarding Greenway overlay considerations, reference is made to my discussion of Land Use 35.
- 5) There is no discussion or other support for the appraiser's upward adjustment of the sale price in reaching his final conclusion of [            ] per acre.
- 6) The appraiser has not provided enough information or analysis to reconcile his value conclusions for Land Use 36 ([            ]) and L.U. 37 ([            ]); the ten-fold difference appears extreme and the rationale or support for the difference is unclear.

### **RR. Land Use 38 Valuation – Rural Residential, East of Veneta, Pages 26-27**

- 1) Mr. Rex provides six sales of which three were also relied on for Valuation Unit 34. He relies on the mean and median of sales as the basis of his conclusion but provides no indication why this is most reasonable. The reader does not have the ability to determine if the appraiser's conclusion is reasonable because insufficient data is provided about the subject ATF areas and the sale properties.
- 2) Inconsistency of value conclusions reached by Mr. Rex is apparent between this unit and Land Unit 24 (Rural Residential, Between Noti and Veneta). The [            ] per acre difference seems extreme relative to the 5 mile separation between the portions of the subject; this difference should be addressed and supported by the appraiser to make his conclusions credible.

Furthermore, one likely market value trend would be for rural residential values to decrease with distance from Eugene; this is exemplified by Mr. Rex's conclusions between L.U. 38 and 34 but not between L.U. 34 and 1.



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More analysis discussion and reconciliation analysis should have been provided for the reader of the report to understand why the value differences are justified and to establish that the appraiser has conducted a thorough and adequate appraisal.

- 3) This valuation can not be determined to be reliable or the conclusions credible due to the insufficient amount of data and analysis discussion supplied.

### **SS. Land Use 39 Valuation – Acreage West of Eugene, Page 27**

- 1) The extremely minimal data provided and the limited extent of analysis provided by Mr. Rex for this valuation unit is grossly inadequate. There is no consideration of the size and amenities (utilities, access, etc.) regarding the ATF areas. No comparable sales are provided to support the appraiser's conclusions.
- 2) There is no explanation or other rationale supporting the appraiser's conclusion that [ ] per acre, which is at the low-end of the appraiser's obscure ranges.

### **TT. Fee Subject to Other Rights, Pages 23-24**

- 1) The appraiser's analysis is difficult to follow and confusing. I judge that it is not adequately clear for the intended users of the report.
- 2) Insufficient data and analysis was provided to understand what the right limits are, and why the (percentage of fee value remaining) conclusions are reasonable. This is another example of the appraiser's conclusions being stated and not summarized.
- 3) Some problems with the conclusions reached by the appraiser are obvious from the limited data provided, as summarized below.
- 4) Regarding "Code 1", Mr. Rex concludes that 5 percent of fee value remains for areas with "public rights-of-way including federal, state, and county roads; public and private levees". In my professional experience, I have never seen a buyer pay anything for areas encumbered for public road usage; it inherently makes sense that private parties would not pay for public roads since there are no private or meaningful rights to use such areas.

It is possible that there may be some examples of nominal value being paid for public-road-encumbered areas, but I strongly believe such would be the very rare exception. As a matter of example, Washington County (west side of the Portland, Oregon metropolitan area) typically acquires its public road rights-of-way by means of what equates to an easement, and it pays 100 percent of fee value for such.

Finally, there is no data or analysis provided supporting the conclusion of 5 percent and this appears to directly contradict the appraiser's [ ] value conclusion regarding Land Use 0 (Road/River/Water).

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- 5) Regarding "Code 2", the comments made above regarding Code 1 are applicable to a portion of this code. Additionally, there is no data or analysis indicating the appropriateness for the 95 percent conclusion reached regarding the State's drainage rights.
- 6) Regarding "Code 3", the 50 percent conclusion seems illogical and do not seem reflective of typical market attitudes. It begs the question - Why would someone pay 50 percent of fee value for an area that typically could not be built on and could be used by the State for highway purposes at any time? This simply is not explained by the appraiser.
- 7) Regarding "Code 4", I do not know what a "private longitudinal access easement" is, and this is not explained by the appraiser. Also, an easement's effect on value often differs from property depending on property type, location, etc., and such factors are not discussed in this appraisal.
- 8) Regarding "Code 5", the 50 percent conclusion seems inconsistent with the footnote for this item, which essentially says there is little likelihood that the easement rights can be exercised, or the impact of the reservations is not measurable and therefore inconsequential. Again, it is judged that some explanation of rationale would be helpful and is imperative for understanding of the appraisal.

The appraiser's "Footnote 2" is also perplexing and incorrect because it addresses timber rights owned by RailTex Logistics, Inc. The appraiser has established that he is appraising the encumbered fee simple interest rights of land owned by CORP but he is also including timber value owed by another entity. This is a significant error in the appraisal.

- 9) Regarding "Code 6a", insufficient information is provided to adequately understand what the appraiser is doing. Furthermore a significant error is apparent. Footnote 3 (see bottom of page 29) refers to the Fern Ridge Reservoir and states "...the ATF land use is wetlands"; nonetheless Code 6a has been applied only to Segment 227 that is classified as part of Land Use 2 (Acreage (Timber), Lane County). It seems the Segment 227 might be better classified as part of Land Use 0 (Road/River/Water) or 11 (Wetlands).
- 10) Regarding Codes 6b-6d, insufficient information is provided to adequately understand what the appraiser is doing. It appears that Footnote 3 should also apply to these codes, but such is not noted. Regardless, it is not clear what the appraiser is doing and how it is accurate or credible.

### **UU. Timber Rights, Pages 29-31**

- 1) The appraiser's analysis of timber rights is significantly wrong in several important ways.

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- 2) The appraiser's assertion that the timber reservation does not apply to Douglas County is demonstrably incorrect.
- 3) The appraiser states that RailTex Logistics, Inc. (and not CORP as stated) is the entity that acquired the timber rights in question, and this is a very important distinction. CORP and RailTex may be owned by the same company but that is a very different situation than the title ownership being the same.

As one basis of support for this conclusion, in past appraisal assignments I have been instructed by the Oregon Department of Justice that it is proper to conclude that such differences in title establish that unity of title/ownership does not exist in regards to determining Legal Larger Parcel (a consideration important for determining just compensation in cases of eminent domain acquisitions). The rationale behind the Dept. of Justice's position is the "Yellow Book" (Uniform Appraisal Standards for Federal Land Acquisitions) and that typically there are beneficial reasons for entities to separate ownerships (i.e. taxes) so it is unreasonable or inequitable for related but different ownerships to claim unity elsewhere when it suits them.

Furthermore, the RMI appraisal establishes that it is appraising the encumbered fee simple interest of the land subject to the "Feeder Line Application of the Coos Bay Line". My understanding is that the feeder line application applies to the property owned by CORP and necessary for operation of the railroad; in these proceedings the OIPCB is not addressing superfluous property owned by RailTex. My position is further supported by the fact that the timber rights in question are a marketable asset that is not required for the rail line; this is evidenced by 12.25 acres of timber rights sold by RailTex Logistics, Inc. as described by Mr. Rex as Footnote 2 on page 28.

- 4) The appraiser has analyzed the RailTex timber purchase to use as a comparable, and this has been done in a significantly flawed manner of using the indicated price per mile. His analysis and use of the sale makes no consideration for non-forested areas (urban environments, wetlands, etc.) and therefore is fundamentally flawed. Ideally the analysis would consider the timbered acreage and/or timber volume, quality, etc.
- 5) The appraiser's third paragraph found on page 30 is judged to be incomprehensible.
- 6) The appraiser explains that his value conclusions for Land Use units 2 and 24 reflect value for timber rights not owned by CORP or otherwise part of the subject property. He then assumes that a prospective buyer of the subject could and would acquire the timber rights for Lane and Coos Counties, which is a dubious and extraordinary assumption; it is inappropriate to base a value on the uncertain actions of others and it is grossly misleading and not compliant with USPAP to

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improperly disclose assumptions upon which the value conclusion is based. In summary, his analysis and conclusion of timber rights value is based on dubious and significant extraordinary assumption that is presented in a confusing and misleading way (the assumption is not disclosed on pages 42 and 43 that regard assumptions).

- 7) Mr. Rex has not provided sufficient data or evidence for his conclusion of [ ] for the assumed timber price associated with his inappropriate and undisclosed hypothetical condition.
- 8) The convoluted analysis provided by Mr. Rex does not address the value of the subject (without timber rights) relative to the ATF properties. He could have done this much more adequately by applying the [ ]/acre value conclusion to Land Use units 2 and 24, and according to his report this would have resulted in lower his value conclusion by [ ] (as opposed to the [ ] conclusion he haphazardly used).

### **VV. Explanation of ATF Valuation Table (Figure 25), Page 33**

- 1) The appraiser states that, "In cases where one ATF land use is either a road, river, or other water body, the ATF value on the opposite side of the corridor [subject railway inferred from following sentence] is used for the segment."

This is the correct application of ATF methodology, but it has not been consistently applied by the appraiser. For example, reference is made to the appraiser's valuation of Land Use 9, where the appraiser has applied the value of residential sites along the river to the subject property, even though Highway 36 separates the subject line from the waterfront residential areas indicated by the appraiser.

- 2) The appraiser states, "In situations where a road is on both sides of the corridor, the ATF land uses on the side of the roads, opposite the corridor, are used as the ATF land use." This is not appropriate appraisal methodology for valuing the net liquidation value of the property, as described previously in the appraisal review analysis.

### **WW. Discounted Cash Flow Net Liquidation Value, Page 39**

- 1) In the third paragraph on page 39, the appraiser lists his estimates of anticipated sell-out periods for the various property types and then concludes to an average weighted by the number of acres for each land use, resulting in the overall percentage sold estimate of 85 percent.

The data provided is insufficient. There is no support for the estimates of sell-out periods for the individual property types, and the number of acres considered for each land use is not provided so the reader can check for reasonableness.

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- 2) It is an acceptable statement that many of the same characteristics are present for residential subdivision development and the sale of disassembled railroad corridor parcels. However, I do not feel that the risks are similar, and the appraiser has provided insufficient data and analysis to otherwise convince readers of the report. It is my opinion that the analysis provided regarding the 18 percent discount conclusion is not sufficiently reasonable.
- 3) No apparent consideration has been given to the railroad industry's after-tax, weighted-average cost of capital, which the STB reported was 9.94 percent for the year 2006. This is significantly less than the figure used by RMI.

### **XX. Reconciliation (None Apparently Provided by Appraiser)**

It appears that insufficient, if any, reconciliation has been undertaken by the appraiser. The following table portrays some key factors where deviations are apparent and should have been reconciled to lead to a clear and credible appraisal.

Sample of Reasonable Reconciliation Factors					
Land Use Unit	Land Use Description	Price/Acre Conclusion	Statistical Indicator Used	Standard Deviation	Coefficient of Variance
LU 0	Road/River/Water	[ ]	N/A		
LU 1	Rural Residential, Lane County	[ ]	Mean & Median	[ ]	28%
LU 2	Acreage (Timber), Lane County	[ ] <sup>9</sup>	Mean & Median	[ ]	42%
LU 3	Rural Residential (Segment 20)	[ ]	N/A (only one sale cited)		
LU 4	Flood Plain	[ ]	N/A (no sales cited)		
LU 5	Swiss Home Residential	[ ]	N/A (only one sale cited)		
LU 6	Swiss Home Commercial	[ ]	N/A (only Land Use 5 sale cited)		
LU 7	Swiss Home Industrial	[ ]	N/A (no sales cited; general value range for industrial/commercial sales range cited; conclusion of [ ]/Ac is inexplicably below general area range)		
LU 8	Industrial (Swiss Home Poor)	[ ]	N/A (Land Use 7 data, above, cited as support for [ ]/Ac conclusion)		
LU 9	Waterfront Commercial	[ ]	Mean	[ ]	12%
LU 10	Mapleton Residential	[ ]	Mean	[ ]	52%

<sup>9</sup> The appraiser subsequently deducts value for timber rights based on very weak analysis, as described previously.

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### Sample of Reasonable Reconciliation Factors (Continued)

Land Use Unit	Land Use Description	Price/Acre Conclusion	Statistical Indicator Used	Standard Deviation	Coefficient of Variance
LU 11	Wetlands	[ ]	Not noted	[ ] (2 sales only)	5% (2 sales only)
LU 12	South Lane Rural Residential	[ ]	Not noted	[ ]	54%
LU 13	Pasture	[ ]	Not noted	[ ]	17%
LU 14	Commercial (Rural Waterfront)	[ ]	N/A (only one sale cited, and this is of a rural residential property)		
LU 15	Acreage (Timber, Douglas County)	[ ]	Mean	[ ]	85%
LU 16	Industrial – Rural	[ ]	N/A (only one sale cited)		
LU 17	Rural Residential (Douglas County)	[ ]	N/A (only one sale cited)		
LU 18	Waterfront Rural Residential	[ ]	N/A (only one sale cited)		
LU 19	Commercial (Reedsport)	[ ]	Not noted	[ ]	34%
LU 20	Commercial (Reedsport)	[ ]	Mean	[ ]	25%
LU 21	Residential (Reedsport)	[ ]	N/A (only one sale cited)		
LU 22	Trailer Park (Reedsport)	[ ]	N/A (no trailer park sales obtained; one nearby residential sale cited)		
LU 23	Rural Residential (Douglas County)	[ ]	N/A (only one sale cited)		
LU 24	Acreage (Timber, Coos County)	[ ] <sup>7</sup>	N/A (only one sale cited)		
LU 25	Campsite	[ ]	N/A (no campsite/trailer park sales obtained, used same price as for residential development derived from single-family residential lot prices)		
LU 26	Lakeside Residential	[ ]	Mean	[ ]	22%
LU 27	Rural Residential (Coos Co.)	[ ]	Not noted	[ ]	21%
LU 28	Acreage (Coos Co.)	[ ]	Not noted	[ ]	30%
LU 29	Commercial (Coos Co.)	[ ]	Not noted	[ ]	24%
LU 30	Industrial (Coos Co.)	[ ]	N/A (no individual sales cited)		

<sup>7</sup> The appraiser subsequently deducts value for timber rights based on very week analysis, as described previously

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**Sample of Reasonable Reconciliation Factors  
(Continued)**

<b>Land Use Unit</b>	<b>Land Use Description</b>	<b>Price/Acre Conclusion</b>	<b>Statistical Indicator Used</b>	<b>Standard Deviation</b>	<b>Coefficient of Variance</b>
<b>LU 31</b>	Industrial in Noti and Veneta	[ ]	N/A ([ ]/Ac. conclusion is significantly less than mean and median of comparable sales provided); No adjustment has been made for differences between Noti and Veneta		
<b>LU 32</b>	Cropland	[ ]	Mean	[ ]	40%
<b>LU 33</b>	Cropland with Road Frontage	[ ] <sup>10</sup> & [ ]	Mean	[ ]	35%
<b>LU 34</b>	Rural Residential Noti to Veneta	[ ]	Mean & Median	[ ]	89%
<b>LU 35</b>	Veneta Commercial	[ ]	None Apparent	[ ]	121%
<b>LU 36</b>	Veneta Single-Family Residential	[ ]	Mean	[ ]	45%
<b>LU 37</b>	Veneta Residential Development	[ ]	N/A (only one sale cited)		
<b>LU 38</b>	Rural Residential, East of Veneta	[ ]	Mean & Median	[ ]	36%
<b>LU 39</b>	Acreage West of Eugene	[ ]	N/A (no sales cited; general value range for industrial/commercial sales range cited, conclusion is inexplicably at low-end range cited)		

<sup>10</sup> Appraiser concluded to value of \$3,000/Acre (see page 32) but \$2,500 is reported in Figure 1 (page 8) and utilized in Figure 25 (page 37).

## **Certificate of Review Appraiser**

The undersigned does hereby certify as follows:

- The facts and data reported by the review appraiser and used in the review process are true and correct.
- The analyses, opinions, and conclusion in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and I have no personal interest in the subject property or with respect to the parties involved.
- I have no bias with respect to the property that is the subject of the work under review or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review report
- My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have personally viewed the subject property as described in the summary of appraisal review scope (page 3 of this report).
- Steven M Beaman, CCIM provided significant assistance in the form of verifying market data, compiling market trend data, providing various opinions, and proof-reading the report. No one else provided significant professional assistance to the person signing this review report.
- As of the date of this report, Jay J. DeVoe has completed the requirements of the continuing education program of the International Right of Way Association and the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- My final overall opinion of the appraisal under review is that it is not reasonably reliable or credible.

\_\_\_\_\_  
Jay J. DeVoe, MAI, SR/WA

September 10, 2008  
Date



## **APPRAISAL REVIEW ADDENDA**

### **ADDENDA CONTENTS LIST**

- SECTION A:** Qualifications of Appraisers
- SECTION B:** USPAP – Relevant Pages
- SECTION C:** Land Use 14 Sale Data
- SECTION D:** Land Use 17, 21 & 22 Sale Data
- SECTION E:** Land Use 29 Sale Data
- SECTION F:** Email from Brian Issa (Community Services Director, City of Veneta) regarding severely limited use potential for Subject due to Greenway Overlay Zone
- SECTION G:** Article supporting no value conclusion for Veneta Greenway Overlay zoning areas

## **APPRAISAL REVIEW ADDENDA**

### **ADDENDA SECTION A**

## **APPRAISAL REVIEW ADDENDA**

### **QUALIFICATIONS AND GENERAL EXPERIENCE OF JAY J. DEVOE, MAI, SR/WA**

#### **Professional Experience:**

- 1999-Present:** Real estate appraisal, consultation, and right-of-way negotiations  
Dba J.J. DeVoe & Associates
- 1998-1999:** Right of Way Agent, Oregon Department of Transportation (ODOT), Portland
- 1994-1998** Full-time real estate appraiser and consultant for Ashley, Chapman & DeVoe
- 1991-1994:** Partner in DeVoe & Associates, real estate appraisal and consulting firm
- 1988-1991:** Full-time real estate appraiser with David M DeVoe, MAI, SRPA

**Education:** Loyola Marymount University  
B.A. Degree – 1988  
Major Emphasis – Finance  
Minor Emphasis – Economics  
(Academic Dean's List, Crimson Circle Service Organization)

**Miscellaneous:** Eagle Scout, Boy Scouts of America (Awarded 1981)

**Professional Memberships:** International Right-of-Way Association  
Chair of Professional Development Committee, 2000-2003  
Co-Chair of Transportation Committee, 1999  
Chair of Advertising Committee, 1993 and 1994  
The Appraisal Institute (Designated Member, MAI)

**Professional Designations:** Senior Right of Way Associate (SR/WA), International Right Of Way Assoc. (IRWA)

No. Member No. 106719, April 2005, March 1994 (Re-certified 1999 & 2004)  
Member of the Appraisal Institute (MAI), The Appraisal Institute  
Member No. 106719, April 2005

#### **Licenses:**

#### **Expiration**

Certified General Real Estate Appraiser, Oregon (No C000651)	May 23, 2010
Certified General Real Estate Appraiser, Washington (No 1100590)	May 23, 2009
Real Estate Broker, Oregon (No. 990500147)	May 23, 2010

#### **Education in Appraisal and Right of Way:**

##### **The Appraisal Institute**

USPAP Update (7 Hours), 2006  
Business Practices & Ethics, 2006  
Valuation of Detrimental Conditions, 2006  
USPAP – 15 Hour, 2005  
Valuation of Detrimental Conditions in Real Estate, 2006  
Advanced Sales Comparison and Cost Approaches, 2004  
Highest and Best Use and Market Analysis, 2003  
USPAP Update 2003, Standards and Ethics for Professionals (2003)  
Standards of Professional Practice, Part A (USPSP), 1996  
Standards of Professional Practice, Part B (USPAP), 1991  
Capitalization Theory & Techniques, Part A, 1991  
Real Estate Appraisal Principles, course successfully challenged, 1994  
Basic Valuation Procedures, course successfully challenged, 1994  
Report Writing and Valuation Analysis, 1994  
Advanced Income Capitalization, course successfully challenged, 1995  
Advanced Applications, 1995  
Standards of Professional Practice, Part B (USPAP), 1996  
Internet Search Strategies for Real Estate Appraising, 1999 seminar  
Analyzing Operating Expenses, 1996 seminar

## **APPRAISAL REVIEW ADDENDA**

### **QUALIFICATIONS AND GENERAL EXPERIENCE OF JAY J. DEVOE, MAI, SR/WA** **(Continued)**

#### **Education In Appraisal and Right of Way (Continued):**

##### **International Right-of-Way Association**

Principles of Real Estate Acquisitions, 1989  
Easement Valuation, 1990  
Legal Aspects of Easements, 1990  
Bargaining Negotiations, 1990  
Group Communications, 1991  
Appraisal of Partial Acquisitions, 1991  
Introduction to the Income Approach of Valuation, 1992  
Understanding Environmental Contamination in Real Estate, 1993  
Property Descriptions, 1993  
Appraising More Than Land and Buildings, 1996 seminar participant  
Skills of Expert Testimony, 1998  
Uniform Relocation Assistance Act-Summary, 1998  
National Uniform Standards of Professional Appraisal Practice (USPAP), 2001

##### **Other**

Eminent Domain Training for Attorney and Appraisers, National Highway Institute, 1999  
Residential Case Studies, American College of Appraisal, 1999  
Property Management, Merritt Community College  
Real Estate Practice, Chabot Community College  
Real Estate Law, Merritt Community College  
Real Estate Finance, Merritt Community College  
Principles of Residential Appraisal, UC Berkeley Extension  
Principles of Real Estate, Chabot Community College

#### **Property Types Appraised:**

Agricultural:	Grazing, Timberland, Nurseries, Vineyards, Open Space
Commercial:	Mixed Use, Offices, Retail, Shopping Centers
Industrial:	Heavy & Light Manufacturing, "Special-Purpose Facilities, Warehouses
Residential:	Single- & Multi-family, Subdivisions
Vacant Land:	All Types

#### **Right of Way Experience:**

Appraisal	Full Acquisitions and Complex Partial-Acquisitions Before & After and Take & Damage Methodologies
Acquisition.	Simple to Complex Files
Relocation	Benefit Studies

#### **Client List (more detail available upon request):**

Attorneys	Non-Profit Corporations	Corporations
Banks	Park Districts	States
Cities	Private Property Owners	Counties
Insurance Companies	Utility Companies	

Last Update 6/20/2008



## APPRAISAL REVIEW ADDENDA

### TYPES OF APPRAISAL ASSIGNMENTS

Commercial	Single and Multi-Tenant Retail, Neighborhood Centers, Regional Centers, Auto Dealerships, Restaurants, Convenience Stores, Single and Multi Tenant Office, Professional Office, Medical/Dental Office, Churches, Proposed Construction
Industrial	Single and Multi Tenant, Incubator Space, Warehouses, Distribution, Manufacturing, Flexible Use
Residential	Single-Family, Duplex, Multi-Family, HUD Properties, Manufactured Home Parks, Recreational Vehicle Parks
Land	Commercial, Industrial, Residential, Subdivision, Forest, Farm, Open Space
Special Purpose	Commercial Redevelopment, Vacations
Other Services	Expert Witness Testimony, HUD Rent Surveys, Consulting

### OREGON GENERAL CERTIFICATION C000737



**APPRAISAL REVIEW ADDENDA**

**ADDENDA SECTION B**

# **APPRAISAL REVIEW ADDENDA**

COMPETENCY RULE

9/2/08 2 04 PM

## **USPAP 2008–2009**

### **COMPETENCY RULE**

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently, or alternatively, must:

1. disclose the lack of knowledge and/or experience to the client before accepting the assignment;
2. take all steps necessary or appropriate to complete the assignment competently; and
3. describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report

Comment Competency applies to factors such as, but not limited to, an appraiser's familiarity with a specific type of property, a market, a geographic area, or an analytical method. If such a factor is necessary for an appraiser to develop credible assignment results, the appraiser is responsible for having the competency to address that factor or for following the steps outlined above to satisfy this COMPETENCY RULE.

The background and experience of appraisers varies widely, and a lack of knowledge or experience can lead to inaccurate or inappropriate appraisal practice. The COMPETENCY RULE requires an appraiser to have both the knowledge and the experience required to perform a specific appraisal service competently.

The COMPETENCY RULE requires recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment.

If an appraiser is offered the opportunity to perform an appraisal service but lacks the necessary knowledge or experience to complete it competently, the appraiser must disclose his or her lack of knowledge or experience to the client before accepting the assignment and then take the necessary or appropriate steps to complete the appraisal service competently. This may be accomplished in various ways, including, but not limited to, personal study by the appraiser, association with an appraiser reasonably believed to have the necessary knowledge or experience, or retention of others who possess the required knowledge or experience.

In an assignment where geographic competency is necessary, an appraiser preparing an appraisal in an unfamiliar location must spend sufficient time to understand the nuances of the local market and the supply and demand factors relating to the specific property type and the location involved. Such understanding will not be imparted solely from a consideration of specific data such as demographics, costs, sales, and rentals. The necessary understanding of local market conditions provides the bridge between a sale and a comparable sale or a rental and a comparable rental. If an appraiser is not in a position to spend the necessary amount of time in a market area to obtain this understanding, affiliation with a qualified local appraiser may be the appropriate response to ensure development of credible assignment results.

Although this Rule requires an appraiser to identify the problem and disclose any deficiency in competence prior to accepting an assignment, facts or conditions uncovered during the course of an assignment could cause an appraiser to discover that he or she lacks the required knowledge or experience to complete the assignment competently. At the point of such discovery, the appraiser is obligated to notify the client and comply with items 2 and 3 of this Rule.

[http://commerce.appraisalfoundation.org/html/uspap2008/USPAP\\_folder/uspap\\_foreword/COMPETENCY\\_RULE.htm](http://commerce.appraisalfoundation.org/html/uspap2008/USPAP_folder/uspap_foreword/COMPETENCY_RULE.htm)

Page 1 of 2



## **APPRAISAL REVIEW ADDENDA**

### **USPAP 2008–2009**

#### **Standards Rule 1-2**

**In developing a real property appraisal, an appraiser must:**

- (a) Identify the client and other intended users; (note1)**
- (b) Identify the intended use of the appraiser's opinions and conclusions; (note6)**

Comment An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased (note7)

- (c) Identify the type and definition of value and, if the value opinion to be developed is market value, ascertain whether the value is to be the most probable price:**
  - (i) In terms of cash; or**
  - (ii) In terms of financial arrangements equivalent to cash; or**
  - (iii) In other precisely defined terms; and**
  - (iv) If the opinion of value is to be based on non-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser's opinion of their contributions to or negative influence on value must be developed by analysis of relevant market data;**

Comment When developing an opinion of market value, the appraiser must also develop an opinion of reasonable exposure time linked to the value opinion (note8)

- (d) Identify the effective date of the appraiser's opinions and conclusions (note9)**
- (e) Identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, (note10) including:**
  - (i) its location and physical, legal, and economic attributes;**
  - (ii) the real property interest to be valued;**
  - (iii) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal;**

## **APPRAISAL REVIEW ADDENDA**

(iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature; and

(v) whether the subject property is a fractional interest, physical segment, or partial holding;

Comment on (i)–(v) The information used by an appraiser to identify the property characteristics must be from sources the appraiser reasonably believes are reliable

An appraiser may use any combination of a property inspection and documents, such as a physical legal description, address, map reference, copy of a survey or map, property sketch, or photographs, to identify the relevant characteristics of the subject property

When appraising proposed improvements, an appraiser must examine and have available for future examination, plans, specifications, or other documentation sufficient to identify the extent and character of the proposed improvements (note 11)

Identification of the real property interest appraised can be based on a review of copies or summaries of title descriptions or other documents that set forth any known encumbrances

An appraiser is not required to value the whole when the subject of the appraisal is a fractional interest, a physical segment, or a partial holding

(f) **Identify any extraordinary assumptions necessary in the assignment;**

Comment An extraordinary assumption may be used in an assignment only if

- it is required to properly develop credible opinions and conclusions,
- the appraiser has a reasonable basis for the extraordinary assumption,
- use of the extraordinary assumption results in a credible analysis, and
- the appraiser complies with the disclosure requirements set forth in USPAP for extraordinary assumptions

(g) **Identify any hypothetical conditions necessary in the assignment.**

Comment A hypothetical condition may be used in an assignment only if

- use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison,
- use of the hypothetical condition results in a credible analysis, and
- the appraiser complies with the disclosure requirements set forth in USPAP for hypothetical conditions

## **APPRAISAL REVIEW ADDENDA**

### **USPAP 2008–2009**

#### **Standards Rule 1-4**

**In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.**

- (a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.**
- (b) When a cost approach is necessary for credible assignment results, an appraiser must:**
  - (i) develop an opinion of site value by an appropriate appraisal method or technique;**
  - (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and**
  - (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).**
- (c) When an income approach is necessary for credible assignment results, an appraiser must:**
  - (i) analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property;**
  - (ii) analyze such comparable operating expense data as are available to estimate the operating expenses of the property;**
  - (iii) analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount; and**
  - (iv) base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence.(note13)**

Comment In developing income and expense statements and cash flow projections, an appraiser must weigh historical information and trends, current supply and demand factors affecting such trends, and anticipated events such as competition from developments under construction
- (d) When developing an opinion of the value of a leased fee estate or a leasehold estate, an appraiser must analyze the effect on value, if any, of the terms and conditions of the lease(s).**

## **APPRAISAL REVIEW ADDENDA**

### **USPAP 2008–2009**

#### **Standard Rule 1-5**

**When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business: (note 14)**

- (a) analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal; and**
- (b) analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal. (note 15)**

Comment: See the Comments to Standards Rules 2-2(a)(vii), 2-2(b)(viii), and 2-2(c)(viii) for corresponding reporting requirements relating to the availability and relevance of information

#### **TABLE OF CONTENTS**

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## **APPRAISAL REVIEW ADDENDA**

- (e) **When analyzing the assemblage of the various estates or component parts of a property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing the whole solely by adding together the individual values of the various estates or component parts.**

Comment Although the value of the whole may be equal to the sum of the separate estates or parts, it also may be greater than or less than the sum of such estates or parts. Therefore, the value of the whole must be tested by reference to appropriate data and supported by an appropriate analysis of such data.

A similar procedure must be followed when the value of the whole has been established and the appraiser seeks to value a part. The value of any such part must be tested by reference to appropriate data and supported by an appropriate analysis of such data.

- (f) **When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.**
- (g) **When personal property, trade fixtures, or intangible items are included in the appraisal, the appraiser must analyze the effect on value of such non-real property items.**

Comment When the scope of work includes an appraisal of personal property, trade fixtures, or intangible items, competency in personal property appraisal (see STANDARD 7) or business appraisal (see STANDARD 9) is required.

### **TABLE OF CONTENTS**

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## **APPRAISAL REVIEW ADDENDA**

### **ADVISORY OPINIONS**

#### **Content of the Summary Appraisal Report (AO-11)**

As noted in the Comments to Standards Rules 2-2(b) and 8-2(b)

*The essential difference between the Self-Contained Appraisal Report and the Summary Appraisal Report is the level of detail of presentation*

The Summary Appraisal Report should contain a summary of all information significant to the solution of the appraisal problem. "Summarize" is the distinguishing term related to the Summary Appraisal Report.

Standards Rules 2-2(b)(vii) and 8-2(b)(vii) require a summary of the scope of work used to develop the appraisal. The intended users of the Summary Appraisal Report should expect to find all significant data reported in tabular or abbreviated narrative formats.

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## **APPRAISAL REVIEW ADDENDA**

### **USPAP 2008–2009**

#### **Standards Rule 1-6**

**In developing a real property appraisal, an appraiser must:**

- (a) reconcile the quality and quantity of data available and analyzed within the approaches used; and**
- (b) reconcile the applicability or suitability of the approaches, methods, and techniques used to arrive at the value conclusion(s).**

#### **TABLE OF CONTENTS**

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## **APPRAISAL REVIEW ADDENDA**

### **ADDENDA SECTION C**



# **APPRAISAL REVIEW ADDENDA**

Lane County Assessment and Taxation Property Information - Report

[http://www.lcid.org/aneat/prop\\_rep.cfm?prop\\_id=1081686](http://www.lcid.org/aneat/prop_rep.cfm?prop_id=1081686)



**Lane County  
Assessment and Taxation  
PROPERTY INFORMATION**



**Account #** 0926012

**Map, Tax Lot, & SIC #** 20-12-01-00-00900

<b>Site Address:</b> 82118 SILT COOS STATION RD WESTLAKE OR 97493	
<b>Owner Address:</b> 82118 SILT COOS STATION RD WEST LAKE, OR 97493	<b>Owner Address:</b>
This property has more than two owner records: No	
<b>Taxpayer Address</b> 82118 SILT COOS STATION RD WESTLAKE, OR 97493	
Additional Account Numbers for this Tax Lot 4270003	
<b>Account Type</b>	Real Property
<b>Account Acreage</b>	4.35
<b>Pending Property Change</b>	No
<b>Property Class</b>	Forest
<b>Special Assessment Program (if applicable):</b>	
Forest Deferral	

**Property Value and Taxes**

	<u>Land Value</u> <u>Real Market</u>	<u>Improvement Value</u> <u>Real Market</u>	<u>Total Value</u> <u>Real Market</u>	<u>Assessed</u>
2007	365,339	0	365,339	17,099
	<u>Taxable Value</u>	<u>2007 Taxes</u>	<u>Tax Code Area</u>	
2007	17,099	\$220.43	09704	

**Residential Building #** 0 (of 0) If there are multiple dwellings, building characteristics will display for only one of the dwellings

	<u>Square feet</u>	<u>Base</u>	<u>Finished</u>		
<b>Year Built</b>				<b>Bsmt Garage Sqft</b>	
<b>% Improvmt Complete</b>				<b>Att Garage Sqft</b>	
	<b>Basement</b>			<b>Det Garage Sqft</b>	
	<b>First</b>			<b>Att Carport Sqft</b>	
	<b>Second</b>				
	<b>Attic</b>				
	<b>Total</b>				

Square footage information for manufactured homes may not currently be available  
For questions on data appearing on this report, call (541) 682-4321  
**DISCLAIMER**

**Assessment & Taxation**

**Taxmaps**

# APPRAISAL REVIEW ADDENDA

Lane County Assessment and Taxation Property Information - Report

[http://www.lcid.org/assess/prop\\_rep.cfm?prop\\_id=1207246](http://www.lcid.org/assess/prop_rep.cfm?prop_id=1207246)



Lane County  
Assessment and Taxation  
PROPERTY INFORMATION



**Account # 4270003**

**Map, Tax Lot, & SIC # 20-12-01-00-00900**

<b>Site Address:</b> 82118 SILTCOOS STATION RD WESTLAKE OR 97493		
<b>Owner Address:</b> 82118 SILTCOOS STATION RD WESTLAKE, OR 97493		<b>Owner Address:</b>
This property has more than two owner records No		
<b>Taxpayer Address</b> 82118 SILTCOOS STATION RD WESTLAKE, OR 97493		
<b>Additional Account Numbers for this Tax Lot</b> 0926012		
<b>Account Type</b>	Real Property	<b>Special Assessment Program (if applicable):</b>
<b>Account Acreage</b>		
<b>Pending Property Change</b>	No	
<b>Property Class</b>	Tract	

**Property Value and Taxes**

	<u>Land Value</u> <u>Real Market</u>	<u>Improvement Value</u> <u>Real Market</u>	<u>Total Value</u> <u>Real Market</u>	<u>Assessed</u>
2007	0	89,360	89,360	43,000
	<u>Taxable Value</u>	<u>2007 Taxes</u>	<u>Tax Code Area</u>	
2007	43,000	\$413.50	09704	

**Residential Building # 1** (of 1) If there are multiple dwellings, building characteristics will display for only one of the dwellings

		Square feet	Base	Finished		
Year Built		Basement			Bsmt Garage Sqft	
% Improvmt Complete	100	First			Att Garage Sqft	
		Second			Det Garage Sqft	
		Attic			Att Carport Sqft	
		Total				

**Manufactured Structure**

Model Year 2005      Make KARSTEN HOMES OF OREGON

X Number

Square footage information for manufactured homes may not currently be available.

For questions on data appearing on this report, call (541) 682-4321

**DISCLAIMER**

**Assessment & Taxation**

**Taxmaps**

## APPRAISAL REVIEW ADDENDA

RMI Web - Tax Full

Page 1 of 1

Presented by **Steven Beaman**  
**GOCAI**

9/3/2008 9 29 04 AM

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### LANE COUNTY, OR

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**Tax ID:** 4270003  
**Prop Addr:** 82118 SILTCOOS STATION RD  
**City/State/Zip:** WESTLAKE OR 97493

---

### OWNER INFORMATION

---

**Owner Name:** PHILLIP M & DEBORAH M MCCABE TRUST  
**Owner Addr:** 82118 SILTCOOS STATION RD  
**City/State/Zip:** WESTLAKE OR 97493

---

### LAND INFORMATION

---

**Lot SF:** **Acreage:**

---

### BUILDING INFORMATION

---

<b>Year Built:</b>	11	<b>Bedrooms:</b>	<b>Garage SF:</b>	0
<b>Bldg Type:</b>	MANUFACTURED STRCTURE	<b>Bathrooms:</b>	<b>Gar/Attic:</b>	
<b>Fireplace:</b>		<b>Living SF:</b>	<b>Heat Method:</b>	
<b>Phy Deprec:</b>	0	<b>1st Floor SF:</b>	<b>Roof Shape:</b>	GABLE
<b>Exterior Wall:</b>		<b>2nd Floor SF:</b>	<b>Roof Mat:</b>	COMP SHINGLE MEDIUM

---

### SALES INFORMATION

---

	<b>Deed Type</b>	<b>Sale Date</b>	<b>Sale Price</b>
<b>Current:</b>	MANUFACTURED HOME	4/20/2007	\$325,000
<b>Prior:</b>			

---

### TAX INFORMATION

---

<b>Tax Year:</b>	2007	<b>Land Val:</b>	\$0	
<b>Tax Amt:</b>	\$413.50	<b>Impv Val:</b>	\$89,360	
		<b>Assessed Val:</b>	\$43,000	<b>Real Mkt Val:</b> \$89,360

---

### LEGAL INFORMATION

---

<b>Prop Class:</b>	409 - TRACT LAND W/ MOBILE HOME OR M/H SITE		
<b>Occpn Code:</b>	SINGLE FAMILY	<b>Map Code:</b>	20-12-01-0-0-00900 Tax Lot: 900
<b>Area:</b>	09704	<b>Township:</b>	20
<b>Prop ID:</b>	1207246	<b>Section:</b>	01
<b>Stat Class:</b>	190	<b>Range:</b>	12
		<b>Qtr Section:</b>	0
<b>Neighborhood:</b>	60765	<b>16th Section:</b>	0

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[http://www.rmlsweb.com/V2/engine/reportgen.asp?PMID=1&RID=TAX\\_FULL&MI.ID\\_ARRA](http://www.rmlsweb.com/V2/engine/reportgen.asp?PMID=1&RID=TAX_FULL&MI.ID_ARRA) 9/3/2008

# **APPRAISAL REVIEW ADDENDA**

20120100

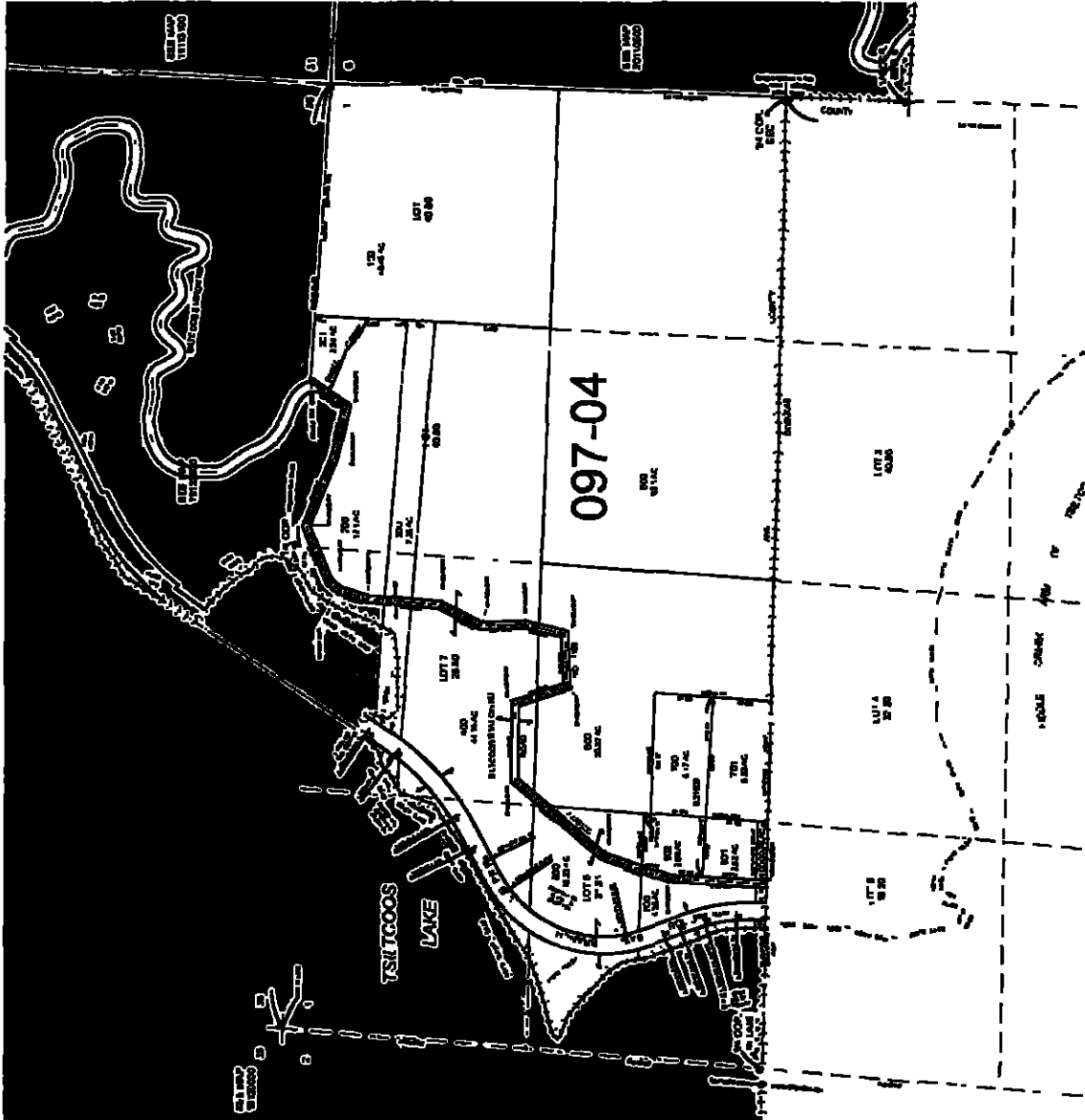
20120100  
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20120100

SECTION 1 T20S R 12W WM  
Lane County  
1" = 400'

FOR ABSTRACTS AND  
TITLES ONLY



## APPRAISAL REVIEW ADDENDA

After Recording Return To  
First American Title  
PO Box 10146  
Eugene, OR 97440



After recording return to:  
McCabe Family Trust dated May 17,  
2006  
5841 E Charleston Blvd STE 230-437  
Las Vegas, NV 89142

Until a change is requested all tax statements  
shall be sent to the following address.  
McCabe Family Trust dated May 17,  
2006  
5841 E Charleston Blvd STE 230-437  
Las Vegas, NV 89142

File No.: 7193-1013338 (CSK)  
Date: April 02, 2007 #0926012 20  
12 01 00 00900

Division of Chief Deputy Clerk  
Lane County Deeds and Records

2007-025483



\$36.00

00000106200700254830030030

04/17/2007 01:29:37 PM

RPR-DEED Cnt=1 Stn=1 CASHTER 01

\$15.00 \$11.00 \$10.00

### **STATUTORY WARRANTY DEED**

Chester H. Morrell and Lucie M. Morrell, husband and wife, Grantor, conveys and warrants to Phillip M. McCabe and Deborah M. McCabe, Trustees of The Phillip M. McCabe and Deborah M. McCabe Family Trust dated May 17, 2006, and any amendments thereto, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

**Subject to:**

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is \$325,000.00. (Here comply with requirements of ORS 93.030)

# APPRAISAL REVIEW ADDENDA

APH 0828012

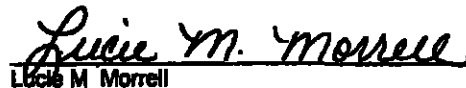
Statutory Warranty Deed  
- continued

File No., 7163-3813338 (CSN)  
Date 04/02/2007

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

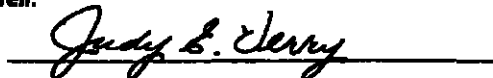
Dated this 2nd day of April, 2007.

  
Chester H. Morrell  
Chester H. Morrell

  
Lucie M. Morrell

STATE OF California )  
County of Placer ) ss.

This instrument was acknowledged before me on this 11<sup>th</sup> day of April, 2007  
by Chester H. Morrell and Lucie M. Morrell.

  
Judy E. Cherry

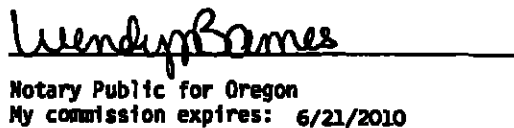


Notary Public for California  
My commission expires: April 23, 2009

STATE OF OREGON COUNTY OF LANE

This instrument was acknowledged before me on this 12th day of April, 2007  
by Chester H. Morrell.



  
Wendy J. Barnes  
Notary Public for Oregon  
My commission expires: 6/21/2010

## APPRAISAL REVIEW ADDENDA

APN: 0929012

Statutory Warranty Deed  
- continued

File No.: 7193-1913338 (CSK)  
Date: 04/02/2007

### **EXHIBIT A**

#### **LEGAL DESCRIPTION:**

BEGINNING AT A POINT NORTH 1° 46' 32" EAST 60 FEET (RECORDS 60 FEET NORTH) OF THE SOUTHEAST CORNER OF GOVERNMENT LOT 6, SECTION 1, TOWNSHIP 20 SOUTH, RANGE 12 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON; RUNNING THENCE NORTH 1° 46' 32" EAST 655.0 FEET (RECORDS 655.0 NORTH); THENCE WEST TO THE BANK OF SILTCOOS LAKE; THENCE SOUTHERLY ALONG THE BANK OF SILTCOOS LAKE TO A POINT SOUTH 88° 47' 15" WEST (RECORD WEST) OF THE PLACE OF BEGINNING; THENCE NORTH 88° 47' 15" EAST (RECORD EAST) TO THE PLACE OF BEGINNING, IN LANE COUNTY OREGON.

SAVE AND EXCEPT THEREFROM THAT CERTAIN 100.0 FOOT STRIP OF LAND CONVEYED TO WILLAMETTE PACIFIC RAILROAD COMPANY BY DEED RECORDED JUNE 24, 1912 IN VOLUME 94, PAGE 541, DEED RECORDS OF LANE COUNTY, OREGON.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED PROPERTY LYING EAST OF THE WEST LINE OF COUNTY ROAD NO. 1198, IN LANE COUNTY, OREGON.

Page 3 of 3

## **APPRAISAL REVIEW ADDENDA**

### **ADDENDA SECTION D**



## APPRAISAL REVIEW ADDENDA

Douglas County Oregon e-Government

[http://www.co.douglas.or.us/puboaa/print\\_puboaa\\_details.asp?propid=](http://www.co.douglas.or.us/puboaa/print_puboaa_details.asp?propid=)

### **Property Details for Property ID: R16907**

#### **Owner Information :**

Owner Name	FRALEY GARY R & JUDITH R
Owner Address #1	840 YORK
Owner Address #2	
Owner Address #3	
Owner City/State/Zip	REEDSPORT OR 97467
Alternate Account #	23981 00
Account Status	A

#### **Property Information :**

Township	21	Situs Address	0 HILLS CT REEDSPORT, OR 97467
Range	12W	Map ID	211235CD02900
Section	35	County Property Class	100
Quarter	C	Legal Acreage	0.21
Sixteenth	D	Code Area	10501
Maintenance Area	1	Neighborhood Code	JP
Year Built		Living Area	0
Bedrooms		Baths	
Exemption Code		Exemption Desc	
MFD Home ID			

#### **Value Information :**

Improvement Appr Value	\$0.00	Total Appr Value	\$72,960.00
Land Appr Value	\$72,960.00	Exemption Value	\$0.00
Land Market Value	\$72,960.00	Total Assessed Value	\$20,905.00
Total Real Market Value	\$72,960.00	Taxes Imposed	\$363.38

#### **Sales Information :**

Deed No	2005-27043	Sale Date	10/25/2005
Sale Price	\$6,000.00		

## APPRAISAL REVIEW ADDENDA

RMLWeb - Tax Full

Page 1 of 1

Presented by **Steven Beaman**  
**GOCAI**

9/3/2008 9 38 57 AM

---

**DOUGLAS COUNTY, OR**

---

**Tax ID:** R16907  
**Prop Addr:** 0 HILLS CT  
**City/State/Zip:** REEDSPORT OR 97467

---

**OWNER INFORMATION**

---

**Owner Name:** FRALEY, GARY R & JUDITH R  
**Owner Addr:** 840 YORK  
**City/State/Zip:** REEDSPORT OR 97467

---

**LAND INFORMATION**

---

**Lot SF:** 9148 **Acreage:** 0.21

---

**BUILDING INFORMATION**

---

<b>Year Built:</b>	<b>Bedrooms:</b>	<b>Garage SF:</b>
<b>Eff Yr Built:</b>	<b>Bathrooms:</b>	<b>Garage:</b>
	<b>Living SF:</b>	<b>Heat:</b>
	<b>1st Floor SF:</b>	<b>Roof Shape:</b>
	<b>2nd Floor SF:</b>	<b>Roof Cover:</b>
		<b>Flooring:</b>
		<b>Siding:</b>
		<b>Foundation:</b>

---

**SALES INFORMATION**

---

	<b>Sale Date</b>	<b>Sale Price</b>	<b>Document Number</b>
<b>Current</b>	10/25/2005	\$6,000	2005-27043

---

**TAX INFORMATION**

---

<b>Tax Year:</b> 07-08	<b>Land Val:</b> \$72,960	
<b>Tax Amt:</b> \$363.38	<b>Impv Val:</b> \$0	
	<b>Total Val:</b> \$20,905	<b>Assessed Val:</b> \$20,905

---

**LEGAL INFORMATION**

---

<b>Class.</b>	<b>Map Code:</b> 21-12W-35CD-02900	<b>Tax Lot:</b> 2900
<b>Code Area:</b> 10501	<b>Township:</b> 21	<b>Lot:</b>
	<b>Range:</b> 12	
	<b>Section:</b> 35	
	<b>Qtr Section:</b> C	
	<b>10th Section:</b> D	
<b>Prop Class:</b> 100 - RESIDENTIAL LAND OR LAND WITH WELL AND SEPTIC		
<b>Subdivision:</b> COURT OF NORTH HILLS		
<b>Legal Desc:</b> COURT OF NORTH HILLS, ACRES 0.21, (2) L 2		

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[http://www.rmlsweb.com/V2.engine/reportgen.asp?PMID=1&RID=1&AX\\_FUJI&MLID\\_ARRA](http://www.rmlsweb.com/V2.engine/reportgen.asp?PMID=1&RID=1&AX_FUJI&MLID_ARRA) 9/3/2008

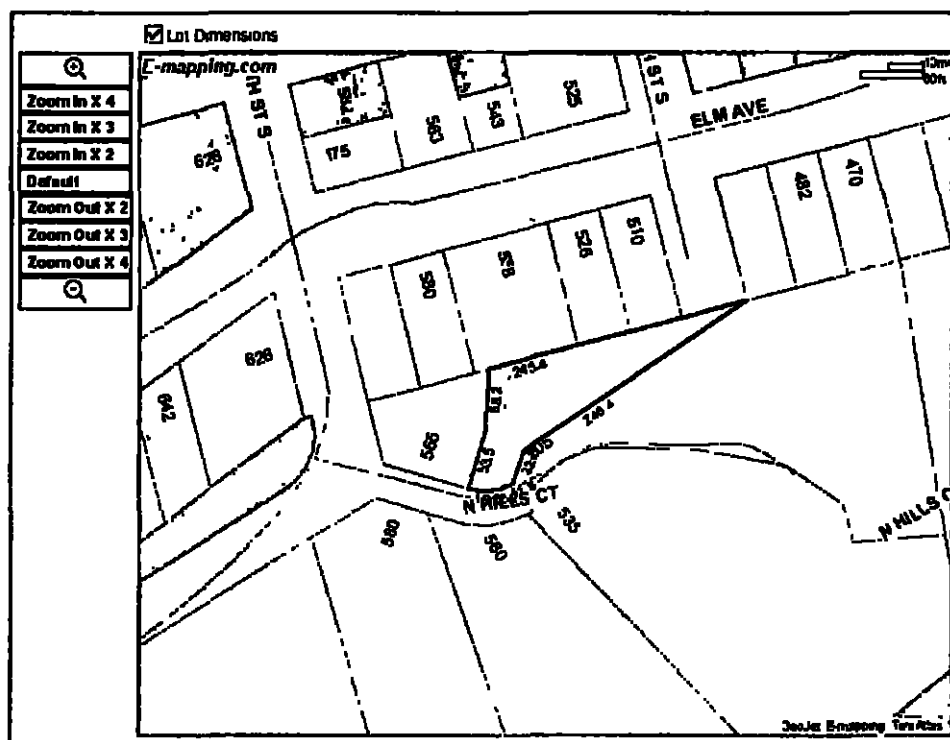
## **APPRAISAL REVIEW ADDENDA**

## GeoJet(E-Mapping.com) Parcel Maps

Page 1 of 1

## Map Parcel Report

0 HILLS CT, 97467



### Parcel Color Legend

	Agricultural		Commercial		Forest
	Industrial		Multi-Family		Public
	Recreation		Residential		Vacant

Information in this report is deemed accurate but not guaranteed  
(9/3/2008)

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Protected by U.S. patents and copyright laws

<http://maps.rmlsweb.com/GeoJetElp/SJPare.m.asp?mapName=42&Address=0++HILLS+CT,+97...> 9/3/2008

**APPRAISAL REVIEW ADDENDA**

DOUGLAS COUNTY OFFICIAL RECORDS  
BARBARA E. NIELSEN, COUNTY CLERK

2005-027043



\$31.00

DEED-MD Cnt=1 Str=13  
\$15.00 \$11.00 \$5.00

10/27/2005 10:53:32 AM  
MAILDESK



**After Recording Return To:**

Ticor Title  
473 Fir Street  
Reedsport OR 97467-0355

**Send Tax Statements To:**

Gary R Fraley  
Judith R Fraley  
840 York  
Reedsport OR 97467

Title Order No 22-48513  
Escrow No 22-48513  
Tax Account No R16907

**WARRANTY DEED**

(ORS 93.850)

Julie Parson, Patrick Parson, Spencer Johnson and Evalyn Johnson, as tenants in common, Grantor, conveys and warrants to Gary R. Fraley and Judith R. Fraley, as tenants by the entirety, Grantee, the following described real property free of encumbrances except as specifically set forth herein

See Exhibit 'A' attached hereto and by reference made a part hereof.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true consideration for this conveyance is \$6,000 00

Dated this 25<sup>th</sup> day of October, 2005

Spencer Johnson

Patrick Parson

Evalyn Johnson

Julie Parson

State of OR, County of Douglas )ss

This instrument was acknowledged before me on October 25, 2005  
by Spencer Johnson

Notary Public

My commission expires 6-4-08



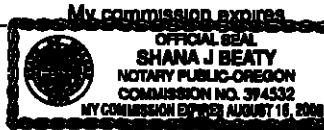
**APPRAISAL REVIEW ADDENDA**

State of OR, County of Douglas )ss

This instrument was acknowledged before me on 10/26, 2005  
by Patrick Parson

Shana J. Beaty  
Notary Public

State of OR, County of Douglas )ss



This instrument was acknowledged before me on October 27, 2005  
by Evelyn Johnson

Mary Robbins  
Notary Public

State of OR, County of Douglas )ss



This instrument was acknowledged before me on 10/26, 2005  
by Julie Parson

Shana J. Beaty  
Notary Public

My commission expires 8/15/09



## APPRAISAL REVIEW ADDENDA

### EXHIBIT "A"

*Lot 2, Court of North Hills, Douglas County, Oregon.*

**Subject to**

1. The rights of the public in and to that portion of the premises herein described lying within the limits of public roads, streets and highways
2. Covenants, conditions and restrictions, but omitting covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, imposed by instrument, including the terms and provisions thereof,  
Recorded July 19, 1978  
Book 684 Page 503, Recorder's No 78-14012  
in Douglas County, Oregon  
  
Said covenants, conditions and restrictions were amended by instrument,  
Recorded June 14, 1985  
Book 916 Page 731, Recorder's No 85-6999  
in Douglas County, Oregon.
3. An Easement created by instrument, including the terms and provisions thereof,  
For: ingress and egress  
Recorded: March 11, 1980  
Book: 748 Page 294, Recorder's No. 80-03548  
in Douglas County, Oregon.

**END OF DOCUMENT**

Escrow No. 22-48513  
Title No 22-48513

## **APPRAISAL REVIEW ADDENDA**

### **ADDENDA SECTION E**

## APPRAISAL REVIEW ADDENDA

Coos County Assessor's Office

<http://assessor.cooscotex.com/cc/WV?pid=AS20&Acct=%20774950>



ASSESSOR'S  
OFFICE  
(541)  
386-3121  
(541)  
386-6071  
PHONE 8:00 A.M.  
FAX to Noon  
HOURS 1:00 P.M.  
Assessor's Office | Contact Information | Public Service Announcements | Publications | Forms | Tax Department  
Coos  
County  
Assessor

### Assessor's Office

#### Account Detail - Assessment

Account#: 77495 01 Year: 2008

Map#: 238 12 W 18 BC 7302

[Sales data](#) [Print](#)

Name: WILKES, STANLEY J & LYN M

Address 1:

Address 2: PO BOX 253

Address 3:

City/State: LAKESIDE, OR 97449

Code Area: 13 06 Maint Area: 1 Value Area: CLK

Prop Class: 100 RESIDENTIAL - UNIMPROVED

Zone Code: RR Document #: 2008-6291

Situs: 595 AIRPORT WY 97449

Mkt Acres: 0.490 Spcl Acres: 0.000 Fire Patrol: 0.000 Special Asmts:

#### Account Detail - Assessment

Descriptions	RMV	MAV	SAV	MSAV	TAV
Land Values	69,420		0	0	
Improvements	0		0		
MFG Structure	0		0		
Sub Total/Base	69,420	25,493	0	0	
Exceptions		0		0	
Sub Total	69,420	25,493	0	0	25,493
Exemptions	0		0	0	0



## **APPRAISAL REVIEW ADDENDA**

Coos County Assessor's Office

<http://assessor.cooscotax.com/cc-WV?cid=AS20&Acct=923774950>

<b>Final Totals</b>	<b>69,420</b>	<b>25,493</b>	<b>0</b>	<b>0</b>	<b>25,493</b>
---------------------	---------------	---------------	----------	----------	---------------

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### **Account Detail - Tax Information**

Tax information is informational only, and does not include interest or any other charges that may be due

#### **Year Tax Amount Tax Paid**

2003 \$0.00	\$0.00
2004 \$32.37	\$32.37
2005 \$293.26	\$293.26
2006 \$295.28	\$295.28
2007 \$318.47	\$318.47

---

**Disclaimer Notice:** The information provided here is for convenience ONLY. The records located at Coos County Assessor's Office are the one and only legal instruments for Assessment purposes. Although reasonable attempts are made to maintain this information as accurate as possible, these documents are being provided as an informational convenience ONLY. Coos County is not in any way liable for any inaccuracies, inconsistencies, errors, omissions, or other deviations in these documents from the original copies maintained and held at the Coos County Assessor Office, Coquille, Oregon.

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# **APPRAISAL REVIEW ADDENDA**

Coos County Assessor's Office

<http://assessor.cooscounty.com/cc/WV?id=AS25&Acct=%2077495%20>

Account Detail - Sales Information									
<div align="right"> <a href="#">Print</a> </div>									
<b>Account#:</b>		77495 01							
<b>Sale Price</b>		65000		<b>Sale Date</b>		06/13/2008			
<b>Buyer Name</b>		WILKES, STANLEY J & LYN M				<b>Seller Name</b>		ROSSBACK, MARLIN D & BEVERLY J	
PO BOX 253						675 17TH ST			
<b>Minstr TYP</b>	<b>WD</b>	<b>Roll YR.</b>	2008	<b>YR Built.</b>	0	<b>Pct GD</b>	0 00	<b>Land</b>	69420
		<b>Code Area</b>	13 06			<b>FCTR BK</b>		<b>Bldg</b>	0
		<b>Zoning CD</b>	RR	<b>Prop CLS</b>	100	<b>Yr APPR</b>	2008	<b>M H</b>	0
<b>Map #</b>	23S 12 W 18BC 7302		<b>Deed.</b>	2008-6291	<b>SQ Feet.</b>	0	<b>TOTL:</b> 69420		
<b>MH SZ/MK</b>	/	<b>Bd/Bth/Fir</b>	0/0/0	<b>ATT/Bsmt</b>		<b>Acre</b>	0.490		
<b>Sales Information</b>									
<b>Account #</b>	<b>Sale Price</b>	<b>Sale Date</b>	<b>Deed #</b>	<b>Additional Acct</b>	<b>Deed Type</b>	<b>Map #</b>			
77495 01	\$70000	07/07/2005	2005-10053	-	WD	23S 12 W 18BC 7302			
77495 01	\$65000	06/13/2008	2008-6291		WD	23S 12 W 18BC 7302			

## APPRAISAL REVIEW ADDENDA

RMLWeb - Tax Full

Page 1 of 1

Presented by **Steven Beaman**  
**GOCAI**

9/3/2008 9 51 14 AM

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### COOS COUNTY, OR

---

**Tax ID:** 77495 J1  
**Prop Addr:** 595 AIRPORT WY  
**City/State/Zip:** LAKESIDE OR 97449

---

### OWNER INFORMATION

---

**Owner Name:** ROSSBACK, MARLIN D & BEVERLY J  
**Owner Addr:** 675 17TH ST  
**City/State/Zip:** COOS BAY OR 97420

---

### LAND INFORMATION

---

**Lot SF:** 21344 **Acreage:** 0.49

---

### BUILDING INFORMATION

---

<b>Year Built:</b>	<b>Bedrooms:</b>	<b>1st Flr SF:</b>
<b>Est Yr Blt:</b>	<b>Bathrooms:</b>	<b>2nd Flr Sqft:</b>
<b>Remodel Yr:</b>	<b>Living SF:</b>	<b>Attic Sqft:</b>
<b>Heat:</b>	<b>Foundation:</b>	<b>Bsmnt Sqft:</b>
<b>Roof:</b>		<b>Floors:</b>

---

### SALES INFORMATION

---

	<b>Deed Type</b>	<b>Sale Date</b>	<b>Sale Price</b>	<b>Doc No</b>
<b>Current:</b>	WD	7/7/2005	\$70,000	2005-10053
<b>Prior:</b>				

---

### TAX INFORMATION

---

<b>Tax Year:</b> 07-08	<b>Land Val:</b> \$69,420	<b>Assessed Land:</b> \$69,420
<b>Tax Amt:</b> \$318.47	<b>Impv Val:</b> \$0	<b>Assessed</b>
	<b>Total Val:</b> \$69,420	<b>Imprv:</b>
		<b>Assessed Val:</b> \$69,420

---

### LEGAL INFORMATION

---

<b>Roll Type:</b> R	<b>Map Code:</b> 23-12-18BC 7302	<b>Tax Lot:</b> 7302
<b>Code Area:</b> 13.06	<b>Township:</b> 23	<b>Zoning:</b> RR
<b>Maint Area:</b> 01	<b>Range:</b> 12	<b>Multi Owner:</b> N
<b>Value Area:</b> CLK	<b>Section:</b> 18	<b>Fire Acres:</b> 0.00000000
<b>Ref Parcel:</b> 2005-10053	<b>Qtr Section:</b> B	
	<b>18th Section:</b> C	
<b>Prop Class:</b> 100 - Residential Land or land with well and septic		


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[http://www.rmlsweb.com/V2/engine/reportgen.asp?PMD=1&RID=TAX\\_FULL&MLID\\_ARRA](http://www.rmlsweb.com/V2/engine/reportgen.asp?PMD=1&RID=TAX_FULL&MLID_ARRA) 9/3/2008

## APPRAISAL REVIEW ADDENDA

Coos County Assessor's Office

<http://assessor.cooscotax.com/cc/WV?qid=AS20&Acct=%2077497%20>



ASSESSOR'S  
OFFICE  
(541)  
398-3121  
(541)  
398-6071  
PHONE 8:00 A.M.  
FAX to Noon  
HOURS 1:00 P.M.  
Coos  
County  
Assessor

Assessor's Office | Contact Information | Public Service Announcements | Publications | Forms | Tax Department

### Assessor's Office

#### Account Detail - Assessment

Account#: 77497 00 Year: 2008

Map#: 23S 12W 18BD 12200

[Sales data](#) | [Print](#)

Name: ROSSBACK, MARLIN D & BEVERLY J

Address 1:

Address 2: 675 17TH ST

Address 3:

City/State: COOS BAY , OR 97420

Code Area: 13 06 Maint Area: 1 Value Area: CLK

Prop Class: 100 RESIDENTIAL - UNIMPROVED

Zone Code: RR Document #: 2005-10053

Situs: 621 AIRPORT WY 97449

Mkt Acres: 0.490 Spcl Acres: 0.000 Fire Patrol: 0.000 Special Asmts:

#### Account Detail - Assessment

Descriptions	RMV	MAV	SAV	MSAV	TAV
Land Values	69,420		0	0	
Improvements	0		0		
MFG Structure	0		0		
Sub Total/Base	69,420	25,493	0	0	
Exceptions		0		0	
Sub Total	69,420	25,493	0	0	25,493
Exemptions	0		0	0	0

## **APPRAISAL REVIEW ADDENDA**

Coos County Assessor's Office

<http://assessor.cooscotax.com/cc/WV?qid=AS20&Acct=%20774970>

Final Totals	69,420	25,493	0	0	25,493
--------------	--------	--------	---	---	--------

---

### **Account Detail - Tax Information**

Tax information is informational only, and does not include interest or any other charges that may be due

#### **Year Tax Amount Tax Paid**

2000	\$139.59	\$139.59
2001	\$121.53	\$121.53
2002	\$131.80	\$131.80
2003	\$143.40	\$143.40
2004	\$144.21	\$144.21
2005	\$293.28	\$293.28
2006	\$295.28	\$295.28
2007	\$318.47	\$318.47

---

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## APPRAISAL REVIEW ADDENDA

RMLWeb - Tax Full

Page 1 of 1

Presented by **Steven Beaman**  
**GOCAI**

9/3/2008 9 54 09 AM

### COOS COUNTY, OR

**Tax ID:** 77497 00  
**Prop Addr:** 621 AIRPORT WY  
**City/State/Zip:** LAKESIDE OR 97449

### OWNER INFORMATION

**Owner Name:** ROSSBACK, MARLIN D & BEVERLY J  
**Owner Addr:** 675 17TH ST  
**City/State/Zip:** COOS BAY OR 97420

### LAND INFORMATION

**Lot SF:** 21344 **Acreage:** 0.49

### BUILDING INFORMATION

<b>Year Built:</b>	<b>Bedrooms:</b>	<b>1st Flr SF:</b>
<b>Est Yr Blt:</b>	<b>Bathrooms:</b>	<b>2nd Flr Sqft:</b>
<b>Remodel Yr:</b>	<b>Living SF:</b>	<b>Attic Sqft:</b>
<b>Heat:</b>	<b>Foundation:</b>	<b>Bsmnt Sqft:</b>
<b>Roof:</b>		<b>Floors:</b>

### SALES INFORMATION

	<b>Deed Type</b>	<b>Sale Date</b>	<b>Sale Price</b>	<b>Doc No</b>
<b>Current:</b>	WD	7/7/2005	\$70,000	2005-10053
<b>Prior:</b>	BS	5/14/2001	\$20,000	2001-5043

### TAX INFORMATION

<b>Tax Year:</b> 07-08	<b>Land Val:</b> \$69,420	<b>Assessed Land:</b> \$69,420
<b>Tax Amt:</b> \$318.47	<b>Impv Val:</b> \$0	<b>Assessed</b>
	<b>Total Val:</b> \$69,420	<b>Imprv:</b>
		<b>Assessed Val:</b> \$69,420

### LEGAL INFORMATION

<b>Roll Type:</b> R	<b>Map Code:</b> 23-12-18BD 12200	<b>Tax Lot:</b> 12200
<b>Code Area:</b> 13 06	<b>Township:</b> 23	<b>Zoning:</b> RR
<b>Maint Area:</b> 01	<b>Range:</b> 12	<b>Multi Owner:</b> N
<b>Value Area:</b> CLK	<b>Section:</b> 18	<b>Fire Acres:</b> 000000000
<b>Ref Parcel:</b> 2005-10053	<b>Qtr Section:</b> B	
	<b>18th Section:</b> D	
<b>Prop Class:</b> 100 - Residential Land or land with well and septic		

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[http://www.rmlsweb.com/V2/engine/reportgen.asp?PMD=1&RIID=TAX\\_FULL&MI.ID\\_ARRA..](http://www.rmlsweb.com/V2/engine/reportgen.asp?PMD=1&RIID=TAX_FULL&MI.ID_ARRA..) 9/3/2008

## APPRAISAL REVIEW ADDENDA



After recording return to:  
Marlin D. Rossback and Beverly J.  
Rossback  
675 17th Street  
Coos Bay, OR 97420

Until a change is requested all tax statements  
shall be sent to the following address:  
Marlin D. Rossback and Beverly J.  
Rossback  
675 17th Street  
Coos Bay, OR 97420  
File No.: 7132-596192 (VRR)  
Date: July 06, 2005

THIS SPACE RESERVED FOR RECORDER'S USE

RECORDED BY  
FIRST AMERICAN TITLE

### **STATUTORY WARRANTY DEED**

*Allen L. Winters and Patricia R. Winters as tenants by the entirety, Grantor, conveys and warrants to Marlin D. Rossback and Beverly J. Rossback as tenants by the entirety, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:*

**Parcel 1 and 2 of Final Partition Plat 2004 #16, Recorded September 30, 2004 as Microfilm No. 2004-14284, Records of Coos County, Oregon**

**This property is free from liens and encumbrances, EXCEPT:**

1. The 2005-2006 Taxes, a lien not yet payable.
2. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

**THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.**

The true consideration for this conveyance is \$70,000.00. (Here comply with requirements of ORS 93.030)

Page 1 of 2

COOS COUNTY CLERK, OREGON TOTAL \$31.00  
TERRI L. TURI, CCC, COUNTY CLERK

07/08/2005 #2005-10053  
03:22PM 1 OF 2

# APPRAISAL REVIEW ADDENDA

APN: 73487.00

Statutory Warranty Deed  
- continued

File No.: 7132-898192 (VRA)  
Date: 07/06/2005

Dated this 7 day of July, 2005

[Signature]  
Allen L. Winters

[Signature]  
Patricia R. Winters

STATE OF Oregon )

County of Coos )

This instrument was acknowledged before me on this 7 day of July, 2005  
by Allen L. Winters and Patricia R. Winters.

[Signature]

Notary Public for Oregon

My commission expires: 8-9-08



Page 2 of 2

COOS COUNTY CLERK, OREGON TOTAL \$31.00  
TERRI L. TURI, CCC, COUNTY CLERK

07/08/2005 #2005-10053  
03:22PM 2 OF 2





[illegible]

## APPRAISAL REVIEW ADDENDA

Coos County Assessor's Office

<http://assessor.cooscotax.com/cc/WV?pid=AS20&Acct=%20%20%201>



### ASSESSOR'S OFFICE

(541)  
386-3121  
(541)  
386-6071  
PHONE 8:00 A.M.  
FAX to Noon  
HOURS 1:00 P.M.



Assessor's Office | Contact Information | Public Service Announcements | Publications | Forms | Tax Department

Coos  
County  
Assessor

### Assessor's Office

#### Account Detail - Assessment

Account#: 167 08 Year: 2008

Map#: 23B 12 W 9CD 102

[Sales data](#)

[Print](#)

Name: FORD, DEBORAH A, ETAL

For all information click [here](#).

Address 1:

Address 2: PO BOX 563

Address 3:

City/State: LAKESIDE, OR 97449

Code Area: 13 02 Maint Area: 1 Value Area: RRL

Prop Class: 100 RESIDENTIAL - UNIMPROVED

Zone Code: F Document #: 2007-9371

Status: 0

Net Acres: 1.440 Spec Acres: 0.000 Fire Patrol: 1.440 Special Asmts: [\\$20.64](#)

#### Account Detail - Assessment

Descriptions	RMV	MAV	SAV	MSAV	TAV
Land Values	63,327		0	0	
Improvements	0		0		
MFG Structure	0		0		
Sub Total/Base	63,327	23,112	0	0	
Exceptions		0		0	
Sub Total	63,327	23,112	0	0	23,112
Exemptions	0		0	0	0

## **APPRAISAL REVIEW ADDENDA**

Coos County Assessor's Office

<http://assessor.cooscotax.com/cc/WV?rid=AS20&Acct=%20%20%20>

Final Totals	63,327	23 112	0	0	23 112
--------------	--------	--------	---	---	--------

---

### **Account Detail - Tax Information**

Tax information is informational only, and does not include interest or any other charges that may be due

#### **Year Tax Amount Tax Paid**

2000	\$149 57	\$149 57
2001	\$156 39	\$156 39
2002	\$181 74	\$181 74
2003	\$200 76	\$200 76
2004	\$205 87	\$205 87
2005	\$215 73	\$215 73
2006	\$215 95	\$215 95
2007	\$221 91	\$0 00

---

Disclaimer Notice: The information provided here is for convenience ONLY. The records located at Coos County Assessor's Office are the one and only legal instruments for Assessment purposes. Although reasonable attempts are made to maintain this information as accurate as possible, these documents are being provided as an informational convenience ONLY. Coos County is not in any way liable for any inaccuracies, inconsistencies, errors, omissions, or other deviations in these documents from the original copies maintained and filed at the Coos County Assessor Office, Coquille, Oregon.

[Home](#) | [Coos County](#) | [Employment](#) | [Contact Us](#) | [Oregon Revenue Resources](#)

## APPRAISAL REVIEW ADDENDA

RMLWeb - Tax Full

Page 1 of 1

Presented by **Steven Beaman**  
**GOCAL**

9/3/2008 10 00 10  
AM

### COOS COUNTY, OR

**Tax ID:** 167 08  
**Prop Addr:** 0  
**City/State/Zip:** OR

### OWNER INFORMATION

**Owner Name:** FORD, DEBORAH A, ETAL  
**Owner Addr:** PO BOX 563  
**City/State/Zip:** LAKESIDE OR 97449

### LAND INFORMATION

**Lot SF:** 62726 **Acreage:** 1.44

### BUILDING INFORMATION

<b>Year Built:</b>	<b>Bedrooms:</b>	<b>1st Flr SF:</b>
<b>Est Yr Bilt:</b>	<b>Bathrooms:</b>	<b>2nd Flr Sqft:</b>
<b>Remodel Yr:</b>	<b>Living SF:</b>	<b>Attic Sqft:</b>
<b>Heat:</b>	<b>Foundation:</b>	<b>Bsmnt Sqft:</b>
<b>Roof:</b>		<b>Floors:</b>

### SALES INFORMATION

	<b>Deed Type</b>	<b>Sale Date</b>	<b>Sale Price</b>	<b>Doc No</b>
<b>Current:</b>	WD	6/14/2007	\$69,900	2007-7710
<b>Prior:</b>	QC	7/6/1994	\$14,000	94-07-0930

### TAX INFORMATION

<b>Tax Year:</b>	07-08	<b>Land Val:</b>	\$63,327	<b>Assessed Land:</b>	\$63,327
<b>Tax Amt:</b>	\$203.91	<b>Impv Val:</b>	\$0	<b>Assessed</b>	
		<b>Total Val:</b>	\$63,327	<b>Imprv:</b>	
				<b>Assessed Val:</b>	\$63,327

### LEGAL INFORMATION

<b>Roll Type:</b>	R	<b>Map Code:</b>	23-12-09CD 102	<b>Tax Lot:</b>	102
<b>Code Area:</b>	13 02	<b>Township:</b>	23	<b>Zoning:</b>	F
<b>Maint Area:</b>	01	<b>Range:</b>	12	<b>Multi Owner:</b>	Y
<b>Value Area:</b>	RRL	<b>Section:</b>	09	<b>Fire Acres:</b>	000001440
<b>Ref Parcel:</b>	2007-9371	<b>Qtr Section:</b>	C		
		<b>16th Section:</b>	D		
<b>Prop Class:</b>	100 - Residential Land or land with well and sept c				

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[http://www.rmlsweb.com/v2/engine/reportgen.asp?PMD=1&RIID=1AX\\_FULL&MLID\\_ARRA](http://www.rmlsweb.com/v2/engine/reportgen.asp?PMD=1&RIID=1AX_FULL&MLID_ARRA) 9/3/2008

# APPRAISAL REVIEW ADDENDA

THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSES ONLY

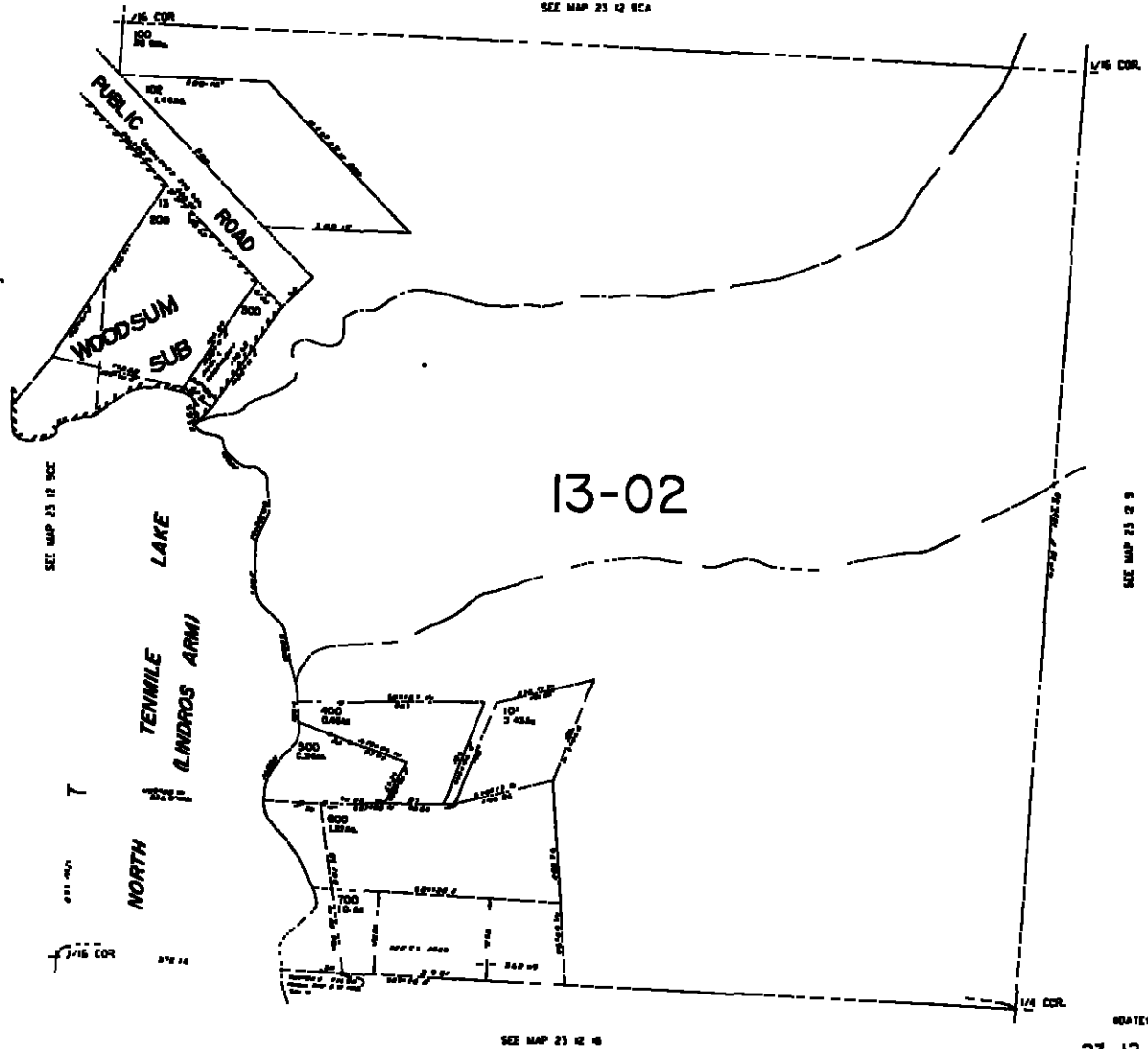
SE1/4 SW1/4 SEC. 9 T.23S. R.12W. W.M.  
COOS COUNTY

23 12 9CD

CANCELLED

1" = .00

SEE MAP 23 12 9CA



# APPRAISAL REVIEW ADDENDA



After Recording Return To:  
Ticor Title  
300 W. Anderson Ave.  
P.O. Box 1075  
Coos Bay OR 97420

AFTER RECORDING  
RETURN TO  
Ticor Title Insurance  
300 West Anderson Ave - Box 1075  
Coos Bay, OR 97420-0225

Send Tax Statements To:  
Benjamin J. Lee  
Tax Accountant  
P.O. Box 563  
Lakeside OR 97449

Title Order No. 47-92148  
Escrow No. 47-92148  
Tax Account No. 187.08 Code:  
13 02

## WARRANTY DEED (ORS 93.850)

FRANK M. GRAY and PATRICIA E. GRAY, as tenants by the entirety, Grantor, conveys and warrants to Benjamin J. Lee, an estate in fee simple Deborah A. Ford, an estate in fee simple, Grantee, the following described real property:

See Exhibit 'A' attached hereto and by reference made a part hereof.

The said property is free from encumbrances except: COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, SET BACK LINES, POWERS OF SPECIAL DISTRICTS AND EASEMENTS OF RECORD, IF ANY

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 187.382 THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.820 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 187.382

The true consideration for this conveyance is \$88,800.00

Dated this 14<sup>th</sup> day of June, 2007

Frank M. Gray

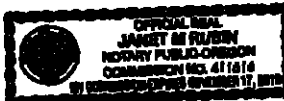
Patricia E. Gray

State of OR, County of Coos )ss

This instrument was acknowledged before me on June 14, 2007 by Frank M. Gray and Patricia E. Gray.

Notary Public

My commission expires: 11-17-2010



Page 1

COOS COUNTY CLERK, OREGON TOTAL \$31.00  
TERRI L. TURI, CCC, COUNTY CLERK

06/15/2007 #2007-7710  
11:54AM 1 OF 2

## APPRAISAL REVIEW ADDENDA

Title No 47-82148

Escrow No. 47-82148

### EXHIBIT 'A'

Legal Description.

Beginning at a point on the East line of a 60 foot wide road right of way described in Book 295, Page 688, Deed Records of Coos County, Oregon, said point also being on the North line of the S  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 8, Township 23 South, Range 12 West of the Willamette Meridian, Coos County, Oregon, thence along the said East boundary of the 60 foot wide road right of way South 46° 02' East 100 feet to the true point of beginning, thence continuing along said East boundary 300 feet, thence East on a line parallel to the North line of said S  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  209 16 feet, thence North 46° 02' West 300 feet, thence West parallel to the North line of said S  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  209 15 feet to the true point of beginning.

Page 2

COOS COUNTY CLERK, OREGON TOTAL \$31.00  
TERRI L. TURI, COO. COUNTY CLERK

06/15/2007 #2007-7710  
11:54AM 2 OF 2



## **APPRAISAL REVIEW ADDENDA**

### **ADDENDA SECTION F**

## APPRAISAL REVIEW ADDENDA

**Jay DeVoe**

---

**From:** Steven M. Beaman, CCIM [steven@beamanbros.com]  
**Sent:** Thursday, May 15, 2008 2:07 PM  
**To:** Jay DeVoe  
**Subject:** FW: Greenway Question

----- Forwarded Message

From: Brian Issa <BIssa@c1.veneta.or.us>  
Date: Thu, 15 May 2008 10:21:24 -0700  
To: "Steven M. Beaman, CCIM" <steven@beamanbros.com>  
Subject: RE: Greenway Question

Brian,  
The ordinance is online and is found here  
[http://www.c1.veneta.or.us/pdf/LandDevelopmentOrd461\\_2-12-2007.pdf](http://www.c1.veneta.or.us/pdf/LandDevelopmentOrd461_2-12-2007.pdf)  
You are looking for section 4.11. The zoning and comp plan maps are online as well.

>From the ordinance you can glean the purpose and application. Yes it  
>applies  
to commercial properties. In the case of the rail line, the greenway is intended to provide  
for open space corridors that can be used for bike/pedestrian paths. It applies to any  
property as shown on the map.

As for parking, development of the greenway is generally not allowed as defined in the  
ordinance. In some instances, development may be allowed through a conditional use permit  
(CUP) as detailed in section 8.20(19). CUPs are quite difficult to obtain and have like to  
be appealed in many cases.

Regarding density transfer, commercial and industrial zones do not generally have minimum  
lot sizes or lot coverage restrictions so "density transfer" is not necessary as there is  
no restriction or density to begin with.

Let me know if you have any additional questions.

Brian Issa  
Community Services Director  
City of Veneta  
(541) 935-2191  
Fax 935-1838  
bissa@c1.veneta.or.us

-----Original Message-----

From: Steven M. Beaman, CCIM [mailto:steven@beamanbros.com]  
Sent: Tuesday, May 13, 2008 3:07 PM  
To: bissa@c1.veneta.or.us  
Subject: Greenway Question

Brian,

Thank you for returning my call. I have the following questions about the greenway  
overlay through town along the railroad corridor.

- 1) What is the purpose of the overlay?
- 2) How does it apply to commercial properties?
- 3) Can you park on it?

## **APPRAISAL REVIEW ADDENDA**

4) Can you transfer density in a commercial zone?

5) Is the ordinance online?

Thank you for your assistance,

Steven M. Beaman, CCIM  
S. M. Beaman & Associates, LLC  
Commercial Real Estate Appraisal & Consulting

(503) 453 7072 Phone  
(503) 961.7953 Fax  
skeaman@ccim.net

----- End of Forwarded Message

## **APPRAISAL REVIEW ADDENDA**

### **ADDENDA SECTION G**

## **APPRAISAL REVIEW ADDENDA**

Veneta battling claim of 'inverse condemnation' - The Register-Guard Eugene, Oregon USA [archive]

9/5/08 1 12 PM

### **Veneta battling claim of 'inverse condemnation'**

The Register - Guard - Eugene, Or  
Author Karen McCowan The Register-Guard  
Date Apr 19, 2008  
Start Page D 37  
Text Word Count 692

#### **Document Text**

Note Two months before trial landowners' \$3.6 million suit is consuming a lot of city time

VENETA - Officials here are preparing to go to court to defend the city against a \$3.6 million lawsuit filed by landowners who claim that Veneta's classification of their commercial property as a "greenway subzone" makes it undevelopable.

Kay and Larry Larson filed suit in May, also claiming that city road and wastewater system projects "increased and concentrated" the flow of water across two adjoining lots they own along Highway 126.

The case is scheduled for trial June 17.

The pair say the city's actions amount to a "taking" of their land, a 4-acre parcel east of Eighth Street and a 14-acre parcel west of Eighth Street along the south side of the highway.

Typically, such claims arise when a government entity uses its power of eminent domain to condemn and claim private property for public use or benefit. In this case, the Larsons allege "inverse condemnation" because the city never exercised its eminent domain power.

Veneta filed a motion seeking dismissal of the case, citing a variety of reasons, but Lane County Circuit Court Judge Karsten Rasmussen ruled in December that the inverse condemnation claim could go to trial.

Rasmussen has not yet ruled on other aspects of the city's motion for summary judgment.

With a trial looming in just two months, several of the city's 17 employees have devoted significant chunks of time preparing the city's case, Veneta City Administrator Ric Ingham said.

City Recorder Sheryl Hackett "probably spent up to half of her day for a period of about three weeks assembling documents in response to two requests" by the Larsons' attorneys, Ingham said. The documents, which filled more than two dozen boxes, go back farther than two decades.

"Several other staff members, including me, have spent anywhere from 10 to 40 percent of their time in recent weeks meeting with our legal counsel and preparing a defense for the case," Ingham added.

The City Council met April 7 in executive (nonpublic) session under an exemption to Oregon's public meetings law permitting closed-door meetings to confer with legal counsel regarding current or pending litigation, but Ingham declined to say if the Larson case was the subject of the meeting.

In its motion for summary judgment, Veneta argued that the Larsons' land remains economically viable because its underlying zone is "highway commercial."

The subzone overlay means only that the city could potentially set additional requirements for such commercial development, which includes everything from motels and restaurants to retail stores, offices and auto repair shops, the city contended in documents filed in court.

Veneta also argued that the Larsons filed their claim after Oregon's six-year statute of limitations had expired.

In depositions, city officials said "surface and groundwater has continuously drained and flowed across the property" for more than 10 years prior to the couple's action and that nearly all of the Larsons' largest lot was declared a wetland in 1998.

Further, they said the Larsons supported - even donated land for - Veneta's 2002 extension of Eighth Street to Highway 126 and its 2003 construction of a local access road running parallel to the highway, Jack Kelly Drive.

## **APPRAISAL REVIEW ADDENDA**

Veneta battling claim of 'inverse condemnation' - The Register-Guard, Eugene, Oregon, USA [archive]

9/5/08 1 12 PM

Finally, the city disputes that the land is undevelopable. Officials say Veneta already approved both a wetland variance and a conditional use permit for the Larsons' proposed "Applegate Marketplace" on the smaller lot, which also fronts Jack Kelly Drive.

A local land use watchdog group, Neighbors 4 Responsible Growth, appealed that decision to the state Land Use Board of Appeals, which eventually upheld the city's approval. But the Larsons never built the marketplace and instead put the land up for sale. They have not sold the property. The couple has not even applied to develop the larger lot, city officials said.

The Larsons have rebutted Veneta's motion by arguing, among other things, that the statute of limitations has not expired for the city action they say stymied their development plans. Veneta's 2006 adoption of the greenway ordinance that created the subzone.

The Larsons' attorney, Donald Joe Willis of Portland, did not return a reporter's phone call.

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### **Abstract (Document Summary)**

In depositions, city officials said "surface and groundwater has continuously drained and flowed across the property" for more than 10 years prior to the couple's action and that nearly all of the Larsons' largest lot was declared a wetland in 1998.

Finally, the city disputes that the land is undevelopable. Officials say [Veneta] already approved both a wetland variance and a conditional use permit for the Larsons' proposed "Applegate Marketplace" on the smaller lot, which also fronts Jack Kelly Drive.

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**Attachment 3**

**Email from Brian Issa (Community Services Director, City of Veneta) regarding severely limited use potential for Subject due to Greenway Overlay Zone**

Jay DeVoe

---

**From:** Steven M. Beaman, CCIM [steven@beamanbros.com]  
**Sent:** Thursday, May 15, 2008 2:07 PM  
**To:** Jay DeVoe  
**Subject:** FW: Greenway Question

----- Forwarded Message

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Let me know if you have any additional questions.

Brian Issa  
Community Services Director  
City of Veneta  
(541) 935-2191  
Fax 935-1838  
bissa@ci.veneta.or.us

-----Original Message-----

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- 3) Can you park on it?



4) Can you transfer density in a commercial zone?

5) Is the ordinance online?

Thank you for your assistance,

Steven M. Beaman, CCM  
S.M. Beaman & Associates, LLC  
Commercial Real Estate Appraisal & Consulting

(503) 453.7072 Phone  
(503) 961.7953 Fax  
sbeaman@ccm.net

----- End of Forwarded Message

**Attachment 4**

**Article supporting no value conclusion for Veneta Greenway Overlay zoning  
areas**

## Veneta battling claim of 'inverse condemnation'

The Register - Guard - Eugene, Or  
 Author Karen McCowan The Register-Guard  
 Date Apr 19, 2008  
 Start Page D 37  
 Text Word Count 692

### Document Text

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Veneta filed a motion seeking dismissal of the case, citing a variety of reasons, but Lane County Circuit Court Judge Karsten Rasmussen ruled in December that the inverse condemnation claim could go to trial.

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#### **Abstract (Document Summary)**

In depositions, city officials said "surface and groundwater has continuously drained and flowed across the property" for more than 10 years prior to the couple's action and that nearly all of the Larsons' largest lot was declared a wetland in 1998.

Finally, the city disputes that the land is undevelopable. Officials say [Veneta] already approved both a wetland variance and a conditional use permit for the Larsons' proposed "Applegate Marketplace" on the smaller lot, which also fronts Jack Kelly Drive.

The Larsons have rebutted Veneta's motion by arguing, among other things, that the statute of limitations has not expired for the city action they say stymied their development plans. Veneta's 2006 adoption of the greenway ordinance that created the subzone.

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**Attachment 5**

**“Base Homesite Theory” Oriented Article by Chet Boddy**

# Excess Land

by Chet Boddy

This article was written for my monthly real estate column, "Back to the Land," which has appeared in the Mendocino Coast Real Estate Magazine since January, 1995

Complete list of articles

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IF YOU OWN A HOUSE ON 40 ACRES, most banks will base your residential loan on the house and the surrounding 5 acres and will disregard the remaining 35 acres. The 5 acre portion is called the "land in use." The 35 acre portion is called "excess land." The reason for this separation is that banks don't generally like to loan money on unimproved land.

Excess land is unused land which is not needed to serve or support the primary highest and best use. It can be dividable or undividable, and can even have its own separate highest and best use, such as agriculture or timber production. Commercial and industrial properties sometimes have excess land reserved for future expansion of the existing use. In Mendocino County, excess land falls into the following categories.

- surplus land which is not dividable or salable
- surplus land which can be sold to an adjacent property owner through a boundary line adjustment
- surplus land which can be sold by subdividing
- surplus land which can be sold by subdividing or through a boundary line adjustment by obtaining a certificate of compliance

## Large-Lot Zoning and Rural Sprawl

Like many rural areas, Mendocino County uses a variety of large-lot zoning categories to limit population density and help preserve agricultural and forest lands. Rural Residential (RR) zones allow 1, 2 and 5 acre lots. Upland Residential (UR) and Agricultural (AG) zones allow 20 and 40 acre lots. Range Land (RL), Forest Land (FL) and Timberland Production (TP) zones allow 160 acre lots. Many of these zones include large lots with only one or two single family residences.

Since 1983, the County has allowed second residential units on any lot where a single family dwelling is a permitted use. The second unit only requires an administrative permit and building permit. Second units are still not allowed within the Coastal Zone. However, the County intends to amend the General Plan to allow second residential units within appropriate areas of the Coastal Zone after the required land use studies are completed.

Many planners now realize that large-lot zoning has created a new problem called "rural



sprawl," the country cousin of urban sprawl. The proliferation of isolated homes on large lots has resulted in deforestation, habitat destruction and miles of poorly-maintained dirt roads which cause erosion and the siltation of streams and rivers.

Some rural counties now think a better planning solution is to encourage small compact communities and manage the surrounding open space more carefully. However, the typical rural home buyer wants a large lot, these lots are readily available, and this is the reality of the market place today.

### **The Land in Use**

The "land in use" is that portion of the property which serves or supports the principal use or improvements. For unimproved land, the land in use is that portion which is most suitable for supporting the primary highest and best use.

For a single family residence, the land in use can range anywhere from a 1/6 acre city lot to about 5 acres. For horse properties, estates and "ranchettes," the land in use may be as large as 10 to 20 acres or more.

For unimproved residential land, the land in use is the best home site, along with any land needed for a well, septic system and outbuildings.

### **Estimating the Value of Excess Land**

Appraising a house on a large piece of land can be difficult, especially if the property is unique and there are no comparable sales. The concept of excess land allows the appraiser to separate the improved portion from the excess portion, making it easier to find comparable sales. This can be a useful tool for estimating the value of large rural properties, whether improved or vacant.

Estimating the value of the land in use is fairly easy, because it involves the same process used for other conventional lots of similar size. However, estimating the value of the excess land is more complicated, and involves a different process for different types of excess land.

### **Timber Value**

Merchantable timber can contribute significant value to excess land. Estimating timber value usually requires the services of a registered professional forester working with an experienced timberland appraiser.

The forester walks the property and measures a portion of the trees in a statistical sampling process called a "timber cruise." After the timber cruise, the forester estimates the total volume and value, by species, of the standing timber and the portion which is harvestable. The forester may also estimate the present value of future harvests using a discount factor. The forester then provides a final estimate of the present value of the timber less all harvesting costs.

A professional timber cruise can be expensive, but may be justified if the timber contributes a lot of value to the excess land. Without a timber cruise, the comparable sales



should include properties which are similarly forested.

It's important to understand that merchantable timber only contributes a portion of its value to the value of the land, depending on the size of the property and its highest and best use. This portion can range from 75 percent on large industrial timberland properties to zero (or less) on small residential lots. Cutting trees on residential parcels can destroy their appeal and cause a loss in market value which exceeds the net value of the timber harvest.

### **Undividable Excess Land**

Estimating the value of undividable excess land is a three-step process. The first step is to identify the land in use and estimate its value. The second step is to estimate the land value of the whole property. The third and final step is to subtract the value of the land in use from the land value of the whole property.

If the excess land has significant merchantable timber, a portion of the net timber harvest value should be added.

### **Boundary Line Adjustments**

Estimating the value of a boundary line adjustment is more complicated. In a typical boundary line adjustment, two adjacent property owners agree to move a common lot line. This increases the size and adds to the value of the buyer's parcel. At the same time, this decreases the size and lowers the value of the seller's parcel.

A piece of land involved in a boundary line adjustment can't be divided or sold as a separate lot. There is typically only one buyer and one seller, and therefore no market value.

Boundary line adjustments involve a branch of economics called "bargaining theory," which predicts that a buyer and seller with this kind of bilateral monopoly would share any cooperative surplus equally. In other words, they would split the difference between the seller's loss and the buyer's gain.

### **Subdividable Excess Land**

Entire books have been written on the subject of subdivision analysis. Countless developers and land speculators have gone broke or struck it rich based on how well they estimated the value of subdividable land. Subdivision analysis is complicated because it requires doing thorough research and making careful assumptions.

Estimating the value of subdividable land normally requires some kind of discounted cash flow analysis. This is a type of computerized spreadsheet which lists all income and sales for future years and then discounts these cash flows to a present value using a discount rate. The discount rate can vary, depending on the perceived risk, the rate of inflation, the subdivider's desired profit, the expected land value appreciation and other factors.

### **Certificates of Compliance**

Many land owners have discovered they can get an "instant subdivision" by taking advantage of the County's "certificate of compliance" process. This controversial ordinance legalizes "phantom subdivisions" which may lie hidden under present day lot lines. This has created a windfall for some and a disappointment for others.

In 1986, prompted by State law, the County of Mendocino passed an ordinance "un-merging" substandard parcels. This ordinance allows nearly all lots which were under separate ownership before 1972 to be grandfathered as legal lots with a certificate of compliance, regardless of lot size, location or shape.

The County won't make a determination until the property owner submits an application and pays a fee. But they will accept any reasonable evidence of separate ownership, including old deeds and utility records. However, several test cases have shown there is no guarantee the County will allow these substandard lots to be developed or reconfigured with a boundary line adjustment.

These substandard parcels may add value if they can be reconfigured and improved with an internal lot line adjustment. They may also add value in a boundary line adjustment with an adjacent property. In many cases they may add no value at all.

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**Chet Boddy, Real Estate Appraisal, Sales and Consulting**

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**Chet Boddy is a Certified General Real Estate Appraiser, Realtor™ and real estate consultant who has lived on the Mendocino Coast since 1976. Look for this and other real estate columns on Chet's web site at [www.chetboddy.com](http://www.chetboddy.com)**

**Attachment 6**

**Letters from abutting timberland owners supporting my related value conclusions**



August 22, 2008

Jay DeVoe  
J.J. DeVoe & Associates, Inc,  
4535 SW 96<sup>th</sup> Avenue  
Beaverton, OR 97005

Re. Survey about potential for acquisition of CORP interest in abutting railroad line

Mr. DeVoe:

This letter is in response to your inquiry of Rosboro Lumber Company's position regarding if and when abutting portions of CORP railroad right of way are abandoned and offered for sale.

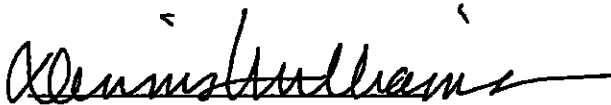
I understand that CORP's ownership interest for the railroad right-of-way abutting our property is limited by the following title reservations:

- (1) the rights for timber, water, oil, gas, rock and minerals have been reserved by the Southern Pacific Transportation Co. and its successors,
- (2) reserved by SPTC and successors is an exclusive and perpetual easement for "Communications and Pipeline Easement" over the 100 feet centered on the existing mainline track;
- (3) No permanent building, structure or fence shall be erected or maintained by Grantee on or over the communications and pipeline easement which would obstruct or interfere with any existing or planned microwave facilities or other communications facilities or pipelines of SPTC located on or planned to be located on the communications and pipeline easement.
- (4) With the exception of mineral reservation rights, SPTC retained a perpetual right-of-way and right of vehicular and pedestrian access over, under, across and through the property for purposes of the use, enjoyment, maintenance, operation and access to the rights, reservation or easement so long as it does not interfere with rail operations;
- (5) SPTC, its successors and assigns enjoys the exclusive right to grant to third parties, at its sole discretion, sub-easements, licenses and any other interest in the communications and pipeline easement; and

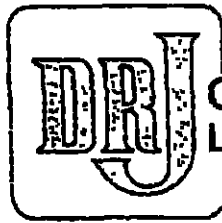
(6) CORP and its successors are prohibited from using the communications and pipeline easement for any of the purposes for which SPTC has reserved the easement.

Rosboro has no interest at any price in purchasing or otherwise acquiring the abutting CORP railroad line as it is of insufficient size to accommodate expansion of our existing manufacturing operation and is not required for ingress or egress at our facility, and, therefore, has no value to Rosboro

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Williams", with a long horizontal flourish extending to the right.

Dennis Williams  
General Traffic Manager  
Rosboro Lumber Company



JOHNSON  
LUMBER COMPANY



August 22, 2008

Jay DeVoe  
J J DeVoe & Associates, Inc.  
4535 SW 96<sup>th</sup> Avenue  
Beaverton, OR 97005

Re Survey about potential for acquisition of CORP interest in abutting railroad line

Mr DeVoe

This letter is in response to your inquiry of the anticipated position of D R Johnson Lumber Company regarding if and when abutting portions of CORP railroad right of way are abandoned and offered for sale

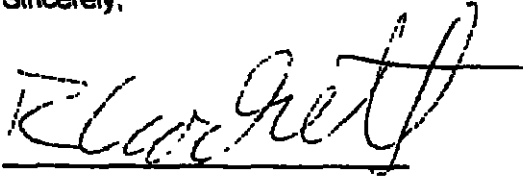
It is understood that CORP's ownership interest for the railroad right-of-way abutting and/or bisecting our property is limited by the following title reservations

- (1) the rights for timber, water, oil, gas, rock and minerals have been reserved by the Southern Pacific Transportation Co and its successors,
- (2) reserved by SPTC and successors is an exclusive and perpetual easement for "Communications and Pipeline Easement" over the 100 feet centered on the existing mainline track,
- (3) No permanent building, structure or fence shall be erected or maintained by Grantee on or over the communications and pipeline easement which would obstruct or interfere with any existing or planned microwave facilities or other communications facilities or pipelines of SPTC located on or planned to be located on the communications and pipeline easement
- (4) With the exception of mineral reservation rights, SPTC retained a perpetual right-of-way and right of vehicular and pedestrian access over, under, across and through the property for purposes of the use, enjoyment, maintenance, operation and access to the rights, reservation or easement so long as it does not interfere with rail operations,
- (5) SPTC, its successors and assigns enjoys the exclusive right to grant to third parties, at its sole discretion, sub-easements, licenses and any other interest in the communications and pipeline easement; and
- (6) CORP and its successors are prohibited from using the communications and pipeline easement for any of the purposes for which SPTC has reserved the easement.



At this time, our company would have no interest at any price of the abutting line, as the width and lack of timber provide us no commercial value.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Crockett", written over a horizontal line.

Randy Crockett, CFO  
D.R. Johnson Lumber Company

3



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

---

**REPLY VERIFIED STATEMENT OF JAMES C. COFFEY**

**Exhibit 3**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

<b>Oregon International Port of Coos Bay</b>	)	
<b>Feeder Line Application –Coos Bay</b>	)	<b>Finance Docket No. 35160</b>
<b>Line Of the Central Oregon &amp; Pacific</b>	)	
<b>Railroad, Inc.</b>	)	

**VERIFIED STATEMENT OF JAMES C. COFFEY**

My name is James C. Coffey, and I am a partner in the law firm of Stebbins & Coffey, a law firm located in North Bend, Oregon. My law firm was established in 1975, and our business address is 745 California St., North Bend, Oregon 97459. Our firm's mailing address is P.O. Box 1006, North Bend, Oregon.

I am currently a licensed member of the Oregon State Bar. I received a B A in History and Education from Dartmouth College, located in Hanover, New Hampshire, in 1971, graduating with honors. I received my J D. from the University of Oregon Law School in 1974.

I have practiced law in the State of Oregon since September, 1974. I was employed by the Coos County District Attorney's office beginning in September, 1974, through the end of 1979, and during my tenure in the Coos County D.A.'s office I personally tried hundreds of cases. I began working for Hayner, Waring & Stebbins late in 1979, and became a partner about one year after I started private practice. My law firm currently represents a number of Cities and Special District's providing municipal services, including the City of North Bend, the City of Myrtle Point, the Coos Bay – North Bend Water Board, the Charleston Sanitary District, the Wedderburn Sanitary District, the Harbor Sanitary District, the Nesika Beach – Ophir Water District, the Langlois Water District, the Port of Gold Beach, the Port of Brooking Harbor and the Oregon International Port of Coos Bay. I also represent the North Bend School District and the Myrtle Point School District. My municipal law practice involves practice in the area of real estate law, including land use regulations, and I routinely provide legal services to my municipal and special district clients in the area of real estate law.

I am a native Oregonian, having been born in Eugene, Oregon, in 1949, and having lived in Oregon throughout my life, with the exception of the years I attended Dartmouth College (1967-1971). I am a "small-town" lawyer, and, as such, my testimony provides a local perspective on the matters now pending before the Surface Transportation Board.

The purpose of this Verified Statement is (1) to address the testimony provided in the Verified Statement of Patricia L. Chapman in this proceeding ("Feeder Line

Proceeding"), and in Application of Central Oregon & Pacific Railroad, Inc., for Authority to Abandon Railroad Lines and Discontinue Service, Docket No. AB-515 (Sub-No. 2) ("Abandonment Proceeding"); (2) to address the testimony of Todd N. Cecil, Vice-President – Real Estate of RailAmerica, Inc., in both proceedings and (3) to provide the Board with local perspective on the "competing appraisals" of the value of the real property comprising CORP's Coos Bay Line. In this regard, I have read and reviewed the Verified Statement of Patricia Chapman filed with Abandonment Proceeding and the second Verified Statement of Mrs. Chapman filed by CORP in its reply to the Feeder Line Application of the Port of Coos Bay (the Port). I have also read and reviewed the Verified Statement of Mr. Cecil contained in the reply filed by CORP to the Port's Feeder Line Application; the Verified Statement of Charles W. Rex III filed in the Abandonment Proceeding; the appraisal of the land prepared by RMI Midwest and filed in the Abandonment Proceeding; Mr. Rex's Verified Statement and the RMI land appraisal filed in the Feeder Line Proceeding; and the Land Appraisal and Verified Statement of Jay DeVoe, filed in the Feeder Line Proceeding.

The Chapman Verified Statement filed in the Abandonment Proceeding contained 39 pages of attachments, documenting her review of the numerous deeds conveying property interests to the various Grantees named in the attachments, none of which were CORP. Witness Chapman testified that based on her review of the conveyance documents and applicable Oregon law, she advised RMI Midwest of those enumerated parcels in the attachment which were conveyed in fee title, less than fee title, or "fee title subject to public rights of way or subject to timber reservations." (See Chapman Verified Statement at 2-3). Witness Chapman's first Verified Statement did not even refer to, let alone analyze, the deeds from Southern Pacific Transportation (SPT) Company to CORP, conveying to CORP the real property it now seeks to abandon. There were three deeds from SPT to CORP conveying the real property which is now subject to the Abandonment Proceeding and the Port's Feeder Line Application, each deed being recorded either in Lane County, Douglas County or Coos County, depending on the location of the lands being conveyed. I refer to copies of these deeds, which were included in the Addenda to Mr. DeVoe's submission in the Feeder Line Proceeding.

All three deeds reserve to SPT, and its successors:

1. Water rights, "... together with a perpetual right-of-way and right of vehicular and pedestrian access over, under, across and through the Property for purposes of the use, enjoyment, maintenance, operation and access to the Water Rights ...";
2. Timber rights, to "all timber growing, grown, or to be grown on the Property, together with a perpetual right-of-way and right of vehicular and pedestrian access over, under, across and through the Property for purposes of the use, enjoyment, maintenance, operation and access to the Timber Rights...";

3. Mineral Rights, to "all oil, gas, sulfur, iron ore, coal, lignite, uranium, limestone, building stone, caliche, rock, shale, gravel, sand and other minerals ... in and under the Property";

4. A perpetual, exclusive Communications and Pipeline Easement, " ..over, under, across and through that portion of the Property which is located fifty (50) feet on either side of the centerline of the existing mainline track of Grantor's railroad right-of-way " This easement provides SPT may use the easement "to construct, reconstruct, install, inspect, repair, maintain, enjoy, operate, use and/or remove existing and/or future communication lines and/or facilities of every kind and nature, including but not limited to, telephone, telegraph, television, fiber optic lines and cables, conduits, microwave towers, structures, facilities and equipment, and radio towers and related appurtenances and all existing and/or future pipelines and related appurtenances." In addition, CORP also acknowledged that the easement was a "floating easement, covering the entire Communications and Pipeline Easement Property." SPT also excepted from the property conveyed a "...perpetual right-of-way and right of vehicular and pedestrian access to the Communications and Pipeline Easement Property, over, under, across and through the Property" for access to the Communications and Pipeline Easement Property (the "Access Easement")" and a similar "Utilities Easement" for access to Microwave Facilities or other communications facilities located on the Communications and Pipeline Easement Property. SPT further reserved "...the exclusive right to grant to third parties, at its sole discretion, sub-easements, licenses and any other interests in the Communications and Pipeline Easement Property and to collect the rents, issues and profits therefrom. . "

Finally, SPT further encumbered the Communications and Pipeline Easement Property by providing as follows:

"No permanent building, structure or fence shall be erected or maintained by Grantee (CORP) on or over the Communications and Pipeline Easement Property which would obstruct or interfere with any then existing or planned Microwave Facilities or other communications facilities or pipelines of Grantor located on or planned to be located on the Communications and Pipeline Easement Property. . . "

Although the conveyances analyzed by Ms. Chapman and other attorneys in her firm under her supervision may have conveyed a fee interest to the majority of the Grantees in the conveyances analyzed and reported in the 39 pages of attachments to her Verified Statement, it is beyond question that in Oregon a fee title interest in a property does not give the holder the absolute right to use the property as the holder desires. A myriad of land use laws, environmental laws, zoning restrictions, building codes, and other laws and regulations impact the ability of a fee simple title holder to use property without restriction. The same holds true for the Water Rights, Timber Rights, Mineral Reservation and the Communication and Pipeline Easement reserved to by SPT in the deeds conveying property to CORP which is the subject of this proceeding. The rights

reserved by SPT directly impact and limit the use of CORP property by potential future buyers, and impact the value of the property to those buyers.

Whether the initial failure of Mrs. Chapman to recognize and address the reservation of rights by SPT in its deeds to CORP was inadvertent or otherwise, the fact remains that because of the failure to review or comment on the SPT deeds to CORP the appraisal by RMI Midwest of the Net Liquidation Valuation of the Coos Bay Line in Lane, Douglas and Coos Counties, Attachment 1 to the Verified Statement of Charles W. Rex III, filed in the abandonment proceeding, was incomplete and adversely impacted. As Mr. Rex stated on page 6 of Attachment 1, "This is an NLV estimate of the fee simple interest, taking into account rights held by others (e.g., roads). Determining whether the railroad holds fee to the property is based **solely** upon advice provided by Gleaves, Swearingen, Potter Scott, LLP." (emphasis supplied). If the appraisal prepared by RMI Midwest did not take into account the rights reserved and held by SPT in its conveyances to CORP, then the resulting appraised NLV of the railroad property is subject to stringent review and considerable question. If it is important, on the one hand, to take into account rights held by others, e.g., roads, in determining the NLV estimate, it is equally, if not more, important to take the reserved SPT rights into account in determining the NLV estimate. Put another way, if roads held by others are important enough for RMI to "take into account" in determining the NLV estimate of the fee simple interests, the reserved SPT rights should also be important enough to similarly "take into account". However, because witness Chapman did not address the reserved SPT rights in her Verified Statement filed in the Abandonment proceeding, witness Rex and RMI were apparently not notified or aware of those reserved rights when witness Rex prepared his Verified Statement and RMI prepared its NLV appraisal filed in the Abandonment proceeding.

The failure to note and comment on the Timber Rights reserved by SPT in the deeds to CORP brings into serious question the valuation provided by RMI Midwest in the abandonment proceeding of the timber acreage for Lane, Coos and Douglas Counties. For example, on page 10 of Attachment 1, RMI bases its estimate of the value of timber acreage in Lane County on the value of the land as timber property. However, due to the reserved timber right by SPT, this land does not have any value as timber property – now or in the future. As noted by witness DeVoe, the value of CORP land, as timber land, is zero. The same analysis holds true for the valuation by RMI of the timber acreage in Coos County (page 19 of Attachment 1 to the Res Verified Statement). The failure of RMI to take into account in its valuation of the timber property the reserved timber rights of SPT creates similar serious doubt about the validity of the other components of the appraisal.

The reserved timber rights in Douglas County were also not recognized or addressed in the RMI appraisal (see, Attachment 1, page 16). These reserved rights were subsequently addressed by Todd N. Cecil, in the Verified Statement he filed in the response of CORP to the Port's Feeder Line Application (see Cecil VS pages 2-3). Witness Cecil alleges that witness DeVoe's discount of the Douglas County timber property based on the reservation of rights in the SPT deed ignores the fact that CORP

subsequently re-acquired the timber rights, citing to the Quitclaim deed dated March 26, 1998, identified as Attachment 1 to the Cecil VS. Unfortunately, a review of Attachment 1 does not support witness Cecil's assertion. The deed in question runs from Union Pacific Railroad Company (successor in interest to Southern Pacific Transportation Company) as Grantor to RAILTEX LOGISTICS, INC., as Grantee. There is no indication in the 1998 deed that RAILTEX LOGISTICS, INC. is the same entity as CORP, nor is there any reference to a deed from RAILTEX LOGISTICS, INC. to CORP for the timber rights. All that one can conclude from the deed referenced by Mr. Cecil is that Union Pacific Railroad (as successor to SPT) sold its reserved timber rights to an entity other than CORP. The sale price of the timber rights was \$166,666.00, or \$167.00 per acre. Plainly, this means that the value of CORP's timber property in Lane and Coos Counties should be discounted since these timber rights are still owned by Union Pacific Railroad. I note that in the appraisal submitted in the Feeder Line Proceeding, Mr. Rex attempted to correct his failure to recognize, let alone address the value of the reserved rights, including timber. I understand that Mr. DeVoe, in his Verified Statement will comment upon Mr. Rex's awkward attempts to account for the reserved rights; therefore, for present purposes, I will simply state that I have serious doubts as to the validity of Mr. Rex's valuation conclusions, as set forth on pages 29 – 31 of his Feeder Line Appraisal. As more fully explained below, I think that Mr. Rex fails to appreciate rural Oregon perspective on property rights.

Witness Chapman, in the Verified Statement that was contained in the Response filed by CORP to the Port's Feeder Line Application, and which was apparently not communicated to RMI when it prepared its NLV estimate for the Abandonment Proceeding in May and July 2008, did belatedly discuss what she characterized as the "No-Build Clause" contained in the SPT deeds to CORP. Witness Chapman concluded that the "No-Build Clause" would prohibit an Owner of land subject to the clause from placing a permanent building or structure on the property only if the building or structure would "obstruct or interfere with any then existing or planned Microwave Facilities or other communications facilities or pipeline ... located on or planned to be located on the Communication and Pipeline Easement property." Witness Chapman also concludes that if a permanent obstruction, such as a building, is constructed on the property subject to the easement at a time when no pipeline or communications facilities are either "then existing" or "planned" the easement holder "may not require the landowner to relocate it and instead the easement holder would need to work around the permanent improvement in installing such pipeline or communications facilities in the future," citing four cases in support of that proposition (Chapman VS at page 3-4).

Witness Chapman is indeed correct in her assertion that the "use of an easement is limited to what is reasonably necessary for the easement's intended purpose" and that a landowner has a right to make reasonable use of the landowner's land. What is not addressed are the other portions of the language in the reserved Communications and Pipeline Easement which give SPT the exclusive right to **"...grant to third parties, at its sole discretion, sub-easements, licenses and any other interests"** (emphasis supplied) in the Communications and Pipeline Easement Property. The easement SPT reserved is a 100 foot easement, 50 feet on either side of the centerline of the existing

mainline track, and by the terms of the reservation is a "floating easement" covering the entire Communications and Pipeline Property. Any adjoining landowner purchasing a parcel of property from CORP will take such property subject to a minimum 50 easement. SPT can grant to any third party a sub-easement, license or other interest in the easement area. SPT can transfer its entire easement, or a sub-easement or license in the Communications and Pipeline Property to any third party at any time. Since the Communications and Pipeline Property easement is not specifically located by means of a legal description, and since the easement itself is described as a "floating easement covering the entire Communications and Pipeline Easement Property," the type of easement retained by SPT is known, under Oregon law, as a "blanket easement." Under Oregon law, SPT, or a successor in interest, has the right to locate the blanket easement in a manner that will accomplish the intended purpose with reasonable, minimum damage or interference to the CORP property subject to the easement. As noted in Principles of Oregon Real Estate Law (Oregon CLE 1995 & Supp 2003): "Because this principle is imprecise, the existence of a blanket easement may significantly cloud the title to the servient land, hindering its transfer or financing. A blanket easement also may prove to be uninsurable as an appurtenance to the dominant premises." (Oregon Real Estate Law, Oregon CLE 1995 & 2003, Chapter 3.30).

This principle, as applied to this particular case, means that the CORP property sought to be abandoned has a "significantly" clouded title, and the blanket easement may adversely affect attempts by an adjoining landowner (the dominant premises) to obtain financing to purchase the property subject to the Communications and Pipeline Easement. Also, even if the property is purchased, the purchaser may not be able to obtain title insurance for the property. Both of these factors have not been addressed in the Verified Statements filed by witness Chapman, and neither factor has been addressed or discussed in the RMI appraisals—including the superficial discussion contained in pages 29-31 of RMI's Feeder Line Appraisal. However, both factors should be considered in setting a sale price for the CORP property, and both factors impact on the proposed sale price for the property should be to reduce the amount an adjoining landowner would pay CORP for the property.

Witness Chapman, in her Verified Statement filed in this proceeding advances the argument that if an adjacent landowner constructs a permanent obstruction in the future on the Communications and Pipeline Easement the easement holder "... **may not** require the landowner to relocate it and instead the easement holder would need to work around the permanent improvement in installing such pipeline or communications facilities in the future." Witness Chapman then seeks to support this argument by citing to several Oregon cases which support the proposition of law that "... the use of an easement is limited to what is reasonably necessary for the easement's intended purpose and that the landowner also has a right to make reasonable use of the landowner's land " (Verified Statement of Patricia Chapman, page 3-4). Unfortunately, the interpretation of Oregon law articulated by Witness Chapman to support her argument is incomplete. The general propositions of law advanced by the Oregon Court's in deciding easement cases are as follows

1. In construing an easement, the court's fundamental task is to discern the nature and scope of the easement's purpose and to give effect to that purpose in a practical manner.
2. To determine an easement's purpose, courts look first to the words of the easement, viewing them in the context of the entire document, and if the words of the easement clearly express the easement's purpose, the court's analysis ends.
3. In giving effect to easement's purpose, general principals of reasonableness control.
4. If ambiguity regarding the purpose of an easement remains after the court looks at the words of the easement, the courts look to relevant circumstances for evidence of the parties' intent, which may include the circumstances existing at the time of the grant of the easement and the manner in which the original parties used the easement
5. The owner of the servient estate has the right to make reasonable use of his or her land, and the owner's rights and the rights of the easement holder are mutually limiting.
6. Easements are burdensome by their very nature, and the fact that a given use imposes a hardship on the servient owner does not, in itself, render that use unreasonable or unnecessary. Ultimately, whether a particular use or act is reasonably necessary depends on the factual circumstances of each case.

All of the general principals of law are noted and discussed by the Oregon Appellate Courts in the cases cited by Mrs. Chapman in her Verified Statement.

In this case, the water rights and the timber rights retained by SPT both include a perpetual right-of-way and right of vehicular and pedestrian access, over, under, across and through the property sold to CORP (the "Retained Rights"), as do the timber rights now held by RailTex. The construction of a permanent obstruction that would interfere with the retained right of way, such as a building or a fence, could lead UPRR, or its successor in interest, to file an action for interference with the retained water and timber rights of way, which would be decided on the specific facts of each individual case. Again, since the SPT deeds conveying the railroad property to CORP do not contain a legal description of the right-of-way for vehicular and pedestrian access, this is a "blanket" right-of-way, covering the entire property conveyed by SPT to CORP. If a subsequent landowner constructs a building or fence on the property now held by CORP, one simply cannot say with any degree of reasonable certainty whether the building or fence would have to be removed to permit access to the reserved timber and water rights, or whether CORP, or its successor in interest, would have to "work around"



the permanent obstruction to gain access to utilize their retained water and timber rights.

The same holds true for the Communications and Pipeline Easement: if an adjoining property owner purchases property abandoned by CORP and then constructs a building or fence on the property purchased, one can not say with any reasonable certainty whether the building or fence would have to be removed, or whether the holder of the easement would have to "work around" the permanent obstruction. Any claim brought by UPRR, or a successor in interest, for interference with the Communications and Pipeline Easement would be decided by applying the particular facts of each individual case, with the court's balancing the respective interests of the each party.

About the only thing that can be said with any certainty is that the Retained Rights and Communication and Pipeline Easement now held by UPRR and RailTex create a substantial and real risk of future litigation over the a landowner's use of any of the property purchased from CORP. This risk of litigation can only be avoided by a landowner complying strictly with the express language contained in the deeds from SPT to CORP: not erecting any permanent building, structure or fence in the Communications and Pipeline Easement Property or in the land covered in the Retained Rights. The Retained Rights and Communications and Pipeline Easement now held by UPRR and RailTex clearly limit otherwise permissible uses of the servient property, and just as clearly impact the value of that property for sale to adjoining landowners. The existence of the Communications and Pipeline Easement and Retained Rights were recognized by witness DeVoe in his Verified Statement and Appraisal and were reflected in his valuation of CORP property. Conversely, these rights were not recognized or discussed by witness Rex until CORP submitted its Response in the Feeder Line Proceeding, and in the second RMI appraisal were addressed in a highly unorthodox manner. The Board can, and should conclude that the value given by witness Rex for the CORP property is artificially high, given the nature and extent of the rights retained by SPT in its deeds to CORP. Since witness DeVoe did take into account the rights retained by SPT in his appraisal, his Verified Statement and appraisal is more accurate and believable than that of witness Rex.

The statement made by Mr. Rex on page 29 of his verified statement contained in the Response by CORP to the Port's Feeder Line Application is further evidence of his confusion regarding the value of the rights retained by SPT in the deeds to CORP. To buttress his conclusion that the 50% discount made by Mr. DeVoe in his appraisal is not warranted, Mr. Rex stated: "The water rights are of no value." Based on my experience and understanding of Oregon law, I find this statement to be completely untrue, and it demonstrates a lack of understanding of Oregon law relating to water rights by Mr. Rex.

Under Oregon law, "All water within the State from all sources of water supply belongs to the public." (ORS 537.110). The reference to "all sources" is meant to include both surface water and ground water. With limited exceptions, a water user must obtain a permit or water right from the State of Oregon Water Resources Department to use either surface or ground water. Surface of ground water may be legally diverted for use

only if the water is used for a beneficial purpose and is not wasted. Generally, a water right is appurtenant to the land, meaning that a water right is attached to the land described in the water right, and if the land is sold, the water right accompanies the sale of the land to the new owner.

The reservation of "... all water rights pertaining to or used in connection with the Property, including without limitation water rights reserved or granted by private easement ..." in the deeds from SPT to CORP includes the use of all water appurtenant to each parcel of land which may be sold to an adjoining landowner, and would include both water rights permits, certificated water rights and the right to use water where the use of the water is exempt from the general requirement to obtain a permit from the Water Resources Department for the use.

In very general terms, a person who wishes to use the waters of the state for a purpose that is subject to the permit requirement is required to file an application for a water right with the state Water Resources Department (WRD). If the application is approved, the applicant is issued a water right permit, which will define the terms and conditions of the applicant's water usage. To perfect a water right, an applicant must make beneficial use of the water right, and, after beneficial use of the water has been made, a water right holder may request that WRD issue a water right certificate. (See, generally, ORS Chapter 537).

If SPT has never filed an application for a water right with WRD, the reservation of "water rights" in the deeds to CORP would likely be construed as a reservation of the right to apply for a permit to use surface or ground water. If CORP railroad property were to be sold to an adjoining landowner, the water rights retained by SPT would not accompany the sale. If, after purchasing CORP property an adjoining landowner were to apply to WRD for a water right, the application is not automatically granted by WRD. Notice of the application is required to be given to all interested parties and interested parties can file objections to the application. In this instance, since SPT has reserved all water rights pertaining or used in connection with the property, SPT would receive notice of the application and would have the opportunity to object to the water right application, based on its reservation of water rights in the deeds from SPT to CORP. The same analysis applies if SPT has applied for, and received, a Water Right Permit or Certificate from WRD for any water appurtenant to the property sold to CORP

Since SPT has reserved the water rights for all property transferred to CORP, any objection it would file to an application by an adjoining landowner for a water right permit would be resolved in either of two ways. by the adjoining landowner purchasing the retained water right from SPT, or through the litigation process. If litigated, the objection to the landowner's application is first decided at the administrative level, through a hearing or hearings conducted by an Administrative Law Judge under WRD rules governing contested case hearings. The administrative decision is not final until it is adopted by the Water Resources Commission (WRC), which ordinarily requires an appearance by the parties to the litigation before a Commission meeting in Salem, Oregon. Either party to the litigation can take an appeal from the decision of the WRC

to the state Court of Appeals, located in Salem, and either party may request discretionary review of the Court of Appeals decision before the Oregon Supreme Court.

Water rights may be transferred (See: ORS Chapter 540). Although the transfer of water rights is subject to numerous statutory and administrative provisions, water rights are subject to being sold by the holder to the appurtenant landowner, and, in this instance, SPT may elect to sell the water rights it has reserved to a third party. In addition, permitted water rights, and certificated water rights may be sold and currently in Oregon there is a considerable market for the purchase and sale of permitted and certificated water rights.

Based on the above discussion of Oregon law pertaining to permitted water rights, it is clear that if CORP is able to sell any of its property to an adjoining landowner, the landowner will not be buying the right to apply to WRD for a permit to use any water, surface or ground, on the property.

Even if a proposed use is exempt from the statutory requirements to obtain a permit from WRD for the use, SPT could still legally object to any non-exempt use of surface or ground water by a landowner purchasing property from CORP based on the reserved water rights. A non-exempt use of surface water, which may be applicable to this proceeding, is stock watering, where stock drink directly from a surface water source and there is no diversion or other modification to the source. Ground water exempt uses include stock watering, lawn or noncommercial gardening, and single or group domestic purposes not exceeding 15,000 gallons per day. Based on the rural location of most of the adjoining property subject to sale by CORP, and the inclinations of Oregon rural property owners, I am of the opinion that many potential purchasers of CORP property would seek to use surface water or ground water in a way that would be exempt from WRD permitting requirements: stock watering, lawn or garden use or for domestic use. Such uses would be in direct conflict with the reservation of water rights by SPT in the deeds to CORP, and would, again, expose the landowner purchasing CORP property to a risk of potential litigation of their use of the water rights reserved to SPT. Of course, an adjoining landowner could purchase the retained water rights from SPT (or its successor in interest), but this cost should be considered in establishing the purchase price of the CORP property, and obviously has not been considered by Mr. Rex in his appraisal.

In the context of this proceeding, the statement made by Mr. Rex that the water rights reserved by SPT have no value is obviously incorrect. Clearly, the reserved water rights have value to SPT, or to any transferee of those rights from SPT.

One measure of the value of a water right is the amount of money an individual or entity is willing to spend to obtain a water right permit from WRD. I have had personal experience in this regard. One of my clients is the Coos Bay – North Bend Water Board (Water Board). Approximately 20 years ago, the Water Board filed an application for a surface water right on Ten Mile Creek, near Lakeside, Oregon, for municipal use. As

the application was processed through the WRD, objections to the application were filed by several groups, including WaterWatch, an environmental group which follows water right applications in the state. My client was unable to resolve the concerns raised by WaterWatch, and as a result the case had to be litigated: First, there was a hearing that lasted several days before an Administrative Law Judge (ALJ) found in favor of the Water Board. The case was then heard by the Water Resources Commission ("WRC") which upheld the ALJ's decision. WaterWatch appealed the decision to the Court of Appeals in Salem and subsequently to the Supreme Court, before the Oregon legislature made a change in the law relating to municipal water rights. This prompted WaterWatch to enter into a settlement agreement with the Water Board allowing the WRD to issue the water rights permit sought by the Water Board. The case lasted many years, and by the end, the Water Board had spent over \$150,000.00 in obtaining the municipal water right.

With this background and personal experience in this case, I find the statement made by Mr. Rex that the water rights reserved by SPT have no value to be completely untenable. Perhaps Mr. Rex's view is a product of his living east of the Mississippi River where the riparian doctrine generally applies--not the doctrine of prior appropriation which dominates west of the Mississippi. Under the riparian doctrine, only landowners with water flowing through their property have claims to the water. In Oregon, however, the prior appropriation doctrine has been law since February 24, 1909, and perhaps Mr. Rex's unfamiliarity with Oregon water law explains his erroneous conclusion that water rights reserved by SPT have no value.

CORP's response to the Port's Feeder Line Application offers arguments to support its proposition that its real property NLV estimate is more reliable than the Port's estimate. Although I have discussed why, in my opinion, the opposite is actually true, I also feel that I must offer additional comments on CORP's analysis of this issue. First, both parties to these cases recognize and agree that the ultimate purchasers of the Coos Bay Line's real property would be adjoining landowners, of necessity located within the State of Oregon, and within the geographic boundaries of rural Lane, Douglas and Coos Counties. As previously noted, I have lived in Oregon nearly all of my life and have practiced law in the rural community of North Bend, Oregon, located in Coos County for 34 years. I have a good feel for the opinions and attitudes of Oregonians living in rural areas and, as such, can attest to the fact that Oregonians take their property rights very seriously. People who choose to own property and live in Oregon's rural areas are generally very protective of their real property. Landowners routinely build fences surrounding their real property, both in small cities and rural areas, to either keep children and livestock in, or to keep others out. After every big game hunting season (deer and elk, primarily) criminal trespass cases appear on the court dockets, where one or more hunters are brought into the criminal justice system by angry landowners who object to anyone coming onto their real property to hunt without obtaining express permission. I have litigated a number of cases involving claims for interference with an easement and adverse possession. Given that owners of real property in this state seek to build fences on their property and frequently build outbuildings and other structures on their property, I can state with a high degree of certainty that the Reserved

Rights and the Communications and Pipeline Easement held by SPT will render the servient property, in many cases, worthless to the adjoining landowners. Without the ability to fence the mostly rural property, or at least do so without the risk of facing a lawsuit over the fencing, or build out buildings and other structures, I seriously doubt abutting property owners would be more than remotely inclined to purchase the abutting railroad property. Indeed, why would an adjoining landowner do so? If the abutting railroad property cannot be used to build a structure or fenced without the risk of a lawsuit, if the timber on the property can not be harvested, if there are no water rights available on the property and if the railroad will no longer be operating trains on the railroad, I believe that many adjoining landowners would simply make use of the property, rather than acquire it by purchase.

This situation strikes me as being analogous to a platted alley way located in residential real property in a city. In some instances, the topography of the alley way will effectively prevent the alley from ever being developed. This is precisely the situation that I have behind my residence in North Bend. As an adjoining landowner, I can petition the City to vacate the alley and add several feet of property to my lot, thereby owning the property and paying additional property taxes. The City has even offered to have the alley vacated. I have not accepted the City's offer—I have no reason to, since I am certain that the alley will never be developed or used by the City. However, there is a flat segment of the alley way that I can, and do, use for storage of wood, storage of fencing material, and storage of other movable materials. Without any investment, I can utilize the alley pretty much as I like – except I cannot extend my fence over the alley or build any structures in the alley. I believe that this situation is fairly analogous to the subject property. Abutting landowners would perceive no value in the subject property due to the various servitudes, and because they could simply use the property without owning it. Rural Oregon property owners simply would not purchase a property that they could not fence or build on without incurring the threat of litigation.

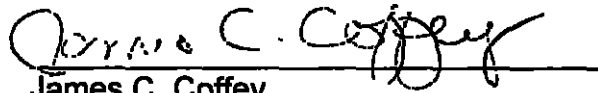
Finally, I also wish to comment on a particular conclusion offered by witness Rex in the appraisals he filed in both the Abandonment and Feeder Line Proceedings. On page 9 of each appraisal, Mr. Rex states: "My conclusion is that in spite of the nation-wide declining real estate market, there is little or no evidence that the subject ATF prices should be adjusted below the prices indicated by the comparable sales." Based on my recent experience in representing clients who are selling real property in the Coos County area, I find this conclusion very difficult to accept. Throughout the RMI appraisal, Mr. Rex primarily uses comparable sales which took place in 2005, 2006 or 2007. I noted only one comparable sale which took place in 2008. One reason for this, as noted by Mr. DeVoe, is there have not been very many comparable sales in 2008. In connection with my practice, I am routinely involved in sales of real property, both for municipal clients and for private individuals. The few sales of real property with which I have been involved in 2008 have resulted in the actual sales price of the real property being for amounts less than the appraised price. In many instances, there simply is no market, or a very limited market, for real property sales in Coos and Western Douglas counties. Indeed, I am personally familiar with the experience of a friend and colleague whose attractive house has remained on the market for 17 months, despite lowering the

sales price and actively marketing the property. Other business associates and acquaintances involved in real property sales, both real estate brokers and title company owners report a continuing decline in real property sales. As noted by Mr. DeVoe in the Verified Statement he filed in this proceeding in June of 2008: "In the final analysis, the market appears to be weakening as reflected in the year-over-year decrease in transactions, average selling price and increase in percentage of expired listing." (DeVoe V.S. at 45). In my opinion, this was true at the time it was written, and is still accurate today. As recently as last week, the Coos County Tax Assessor's office reported that it was scheduling "town meetings" to explain to local property owners why they would see an increase in the amount they must pay for real property taxes, even though the assessed value of their real property was decreasing. From all indications, the end of the local real estate slump is not yet in sight, and it is virtually impossible to predict when the real estate market will get better, given the current economic conditions in Coos and western Douglas and Lane Counties.

For all of the reasons enumerated above, it is my opinion that the RMI appraisals and the Verified Statements of witness Rex unjustifiably and artificially inflate the NLV of the CORP real estate which is the subject of this proceeding. Conversely, since the Land Appraisal Verified Statement of Jay DeVoe takes into account numerous factors, as discussed above, not addressed by witness Rex, it is my opinion that the NLV of the CORP real estate reported by Mr. DeVoe is more accurate and reliable than that of Mr. Rex.

## VERIFICATION

I, James C Coffey, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

  
James C. Coffey

Executed this 10<sup>th</sup> day of September, 2008

4



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

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**REPLY VERIFIED STATEMENT OF MIKE GAUL**

**Exhibit 4**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

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**REPLY VERIFIED STATEMENT OF MIKE GAUL**

My name is Mike Gaul and I am the Deputy Executive Director and the Oregon International Port of Coos Bay ("Port") Harbormaster. I have worked for the Port since 1989, following a 22-year career in the United States Coast Guard. I retired from the Coast Guard as a Master Chief Boatswains Mate, and my last duty assignment was Officer in Charge of the Charleston Lifeboat Station.

As Deputy Executive Director, I manage all leases of Port-owned property and supervise the long-term development and maintenance of Port-owned land, including the Coos Bay Rail Bridge. I also manage the Charleston Marina Complex and function as the liaison between marine terminal operators in the harbor and the federal and state agencies involved in regulation and oversight of maintenance dredging of the deep-draft navigation channel and the shallow-draft Charleston channel. I am also responsible for maintaining the various permits required for these navigation projects. I was also the Project Manager for the Coos Bay rail bridge rehabilitation work completed by the Port.

The purpose of this Verified Statement is to explain the estuaries crossed by the Central Oregon & Pacific Railroad's ("CORP") Umpqua and Siuslaw River swing bridges, how the

swing bridges on the Coos Bay Line ("Line") operate and address why these bridges would be cost and operationally prohibitive for trail use. In addition, I will address the environmental conditions that were required for the Coos Bay rail bridge rehabilitation which consisted primarily of conditions imposed for any work to be completed in a coast estuary of Oregon

Oregon's estuaries play a vital role in the ecological and economic health of the coast and the entire state. For example, they are ecologically important to many fish and wildlife species, providing migration routes and habitat for reproduction, rearing, resting, and foraging. Healthy estuaries provide important habitats for many species we value such as salmon, herring, flounder, crabs, oysters, clams, wading birds, ducks, geese, shorebirds, and harbor seals.

The Siuslaw River swing bridge is located near Cushman, Oregon on the Siuslaw River. The Siuslaw River is approximately 100 miles long and enters the Pacific Ocean at Florence, Oregon. The authorized water depth of the Siuslaw at the bridge is 12 feet mean low water with tidal variation at 3 feet. The Siuslaw River is used for recreational marine use, commercial fishing and some industrial use above the bridge on the river. The Port of Siuslaw is also trying to expand industrial use of property that is above the Siuslaw rail bridge which would increase navigation traffic past the bridge. The fish species in the river include Fall chinook salmon, winter steelhead, cutthroat trout. The Siuslaw River also contains wild coho salmon that are listed as a Threatened Species under the Endangered Species Act.

The Siuslaw River estuary has an in-water work window restriction for November 1 to February 15.<sup>1</sup> The in-water work window means that work below the high tide line can only take place during the in-water work window unless special authorization is received from the Oregon Department of Fish and Wildlife. This means that the removal of in-water structures below the

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<sup>1</sup> [http://www.dfw.state.or.us/lands/inwater/Oregon\\_Guidelines\\_for\\_Timing\\_of\\_InWater\\_Work2008.pdf](http://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_InWater_Work2008.pdf)

high tide line could take more than one window thus requiring additional mobilization.

The operation of the Siuslaw rail bridge is governed by federal law. Title 33, Part 117 of the Code of Federal Regulations prescribes the general and special drawbridge operating regulations that apply to drawbridges across the navigable waters of the United States 49 C F R 117 893 provides the regulation specific to the Siuslaw rail bridge Specifically, this provision states that:

The draw of the Central Oregon and Pacific railroad bridge, mile 8.0 near Cushman, shall open on signal if at least 24 hours notice is given

This means that the swing span is generally kept closed or across the river blocking vessel traffic unless notice is given to the railroad 24 hours prior to the time it is needed opened Since the embargo I have seen this swing span in a constant closed position

The Umpqua River swing bridge is located near Reedsport, Oregon on the Umpqua River. The Umpqua River is approximately 111 miles long and enters the Pacific Ocean near Reedsport, Oregon. The Umpqua River is one of only three rivers that start in, or east of the Cascade Mountain Range and reach the Pacific Ocean. The authorized water depth of the Umpqua at the bridge is 22 feet mean low water with tidal variation at 3 feet The Umpqua River is used for barge, recreational marine use, commercial fishing and some industrial use above the bridge on the river. The fish species in the river include Spring and Fall chinook salmon, summer and winter steelhead, cutthroat trout, shad, smallmouth bass, white and green sturgeon. The Umpqua River also contains wild coho salmon that are listed as a Threatened Species under the Endangered Species Act

The Umpqua River has an in-water work window restriction between November 1 to January 31. As stated above, the in-water work window limits the time that in-water work may be performed.

The operation of the Umpqua rail bridge is governed 49 C.F.R. 117.893 which provides that.

The draw of the Central Oregon and Pacific railroad bridge, mile 11.5 at Reedsport, shall be maintained in the fully open position, except for the crossing of trains or other railroad equipment or for maintenance. During foggy weather when the draw is closed and the channel is not clear for the passage of vessels, a fog horn with an audible range of one-half mile from the draw shall be sounded. Two clear signals of approximately six seconds duration each, repeated at intervals of 60 seconds from completion of the second signal to commencement of the next signal, shall be sounded and repeated from commencement of closure to full opening of the draw. When the draw is again in the open position, the fog horn shall be stopped, indicating that the channel is clear for the passage of vessels.

This means that the Umpqua swing span must be kept open to river traffic except for the crossing of trains or railroad equipment. This restriction plus the cost associated with operating both of these swing span bridges, before even taking into consideration the maintenance and capital costs of these swing bridges, would seem to make it highly impracticable or impossible to use the bridges or any portion of the Line past the bridges for trail use.

Because of my experience with the Coast Guard and as the Project Manager for the Coos Bay rail bridge rehabilitation project I also have experience with the conditions placed on bridge work in an Oregon estuary even when the work is completed under a Nationwide permit. As shown in Permit documents for the Coos Bay rail bridge work, see Exhibit 12 of the Reply, the U.S. Army Corps of Engineers ("Corps") permit required the activities to be conducted in accordance with Regional Conditions and General Conditions. In addition, the project required Coast Guard authorization, certification by the Oregon Department of Environmental Quality,

Oregon Coastal Zone Management consistency concurrence from the Department of Land Conservation and Development and an Oregon Division of State Lands permit. This rehabilitation project required the use of cofferdams and contained pages of conditions many of which are aimed at the protection of the coho salmon which is listed as threatened under the Endangered Species Act

The protections for projects performed in these Oregon estuaries have become even stronger in the years since the Coos Bay rail bridge permit was obtained. In June 2007, the Port received a permit to replace dock pilings along the South Slough and Joe Ney Slough near Charleston, Coos County, Oregon. See Attachment A. This work was performed under a Nationwide Permit and numerous environmental related conditions were imposed on the project. First, the Nationwide Permit was subject to the 16 pages of conditions in the "Standard Local Operating Procedures for Endangered Species (SLOPES III) to Administer Certain Activities Authorized or Carried Out by the Department of Army in the State of Oregon and on the North Shore of the Columbia River." Then there are two pages of Portland District Regional Conditions followed by 15 pages of Regional General Permit conditions that are imposed on any Nationwide Permit. In addition, the project was subject to 15 pages of Section 401 Water Quality Certification General Conditions and three pages of Oregon Department of Land Conservation and Development Conditions for Compliance with the Coastal Zone Management Act. Again, many of these conditions are aimed at protecting the threatened species in these estuaries. Therefore removal of any structure that is in or near the water or could possibly fall in the water is imperative. In addition, removal of the timber features of these bridges which contain a hazardous creosote coating it is likewise imperative to remove the entire structure including the entire timber pile.

In addition, contrary what CORP's Response seems to imply on page 45, footnote 16, the U.S Coast Guard does assert jurisdiction over bridges built under a Secretary of Army permit issued prior to the establishment of the Coast Guard. As shown in the Coast Guard permit for the modifications to the Coos Bay rail bridge, see Attachment B, the Coast Guard also has authority to impose new conditions on a bridge in the navigable waters of the U S including the need for removal of the entire bridge when no longer used for transportation purposes. This is also consistent with my correspondence with Austin Pratt, Chief Bridge Section for the Thirteenth Coast Guard District regarding whether the rail bridges over the Coos Bay, Umpqua River and Siuslaw River would need to be removed in the event of an abandonment and they are no longer being used for transportation. See Attachment C.

It is important to note that the work on the Coos Bay rail bridge was largely driven by the deteriorated condition of the bridge. One cause of the deterioration is from the coastal location of the Coos Bay bridge which is exactly the condition faced by the Umpqua and Siuslaw rail bridges. The salt water eats the old lead-based coating allowing the salt to hit the steel surface and cause corrosion of the support structures. Thus, the maintenance and capital costs associated with these moveable swing span bridges over navigable waters would appear to be cost prohibitive for a trail owner. Moreover, the trail owner would have to keep the Umpqua and Coos Bay rail bridge in an open position which would prohibit trail use on the corridor below Reedsport (or roughly half of the line) unless the trail owner had an employee certified to operate the swing spans on location at all times of trail use.

In conclusion, based upon my first-hand experience with water related projects in the State of Oregon and experience with the Corps and the Coast Guard in this region, I believe that the requirement to remove the entire bridge structures at the Umpqua and Siuslaw Rivers must

be included in the hypothetical assessment of the proposed abandonment and net liquidation valuation in order to appropriately consider the full salvage costs attributed to this Line

Furthermore, based upon my experience with these swing span bridges, I believe the utility of this Line as a trail is highly speculative.

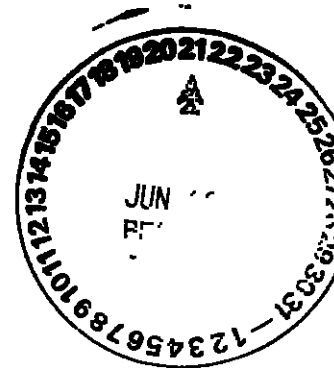




REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, PORTLAND DISTRICT  
EUGENE FIELD OFFICE  
1600 EXECUTIVE PARKWAY, SUITE 210  
EUGENE, OREGON 97401-2156

June 19, 2007



Operations Division  
Regulatory Branch  
Corps No. NWP-1996-1445/5

Mr. Mike Gaul  
Oregon International Port of Coos Bay  
125 Central Avenue, Suite 300  
P O Box 1215  
Coos Bay, Oregon 97420-0311

Dear Mr. Gaul:

The U S. Army Corps of Engineers (Corps) has received Oregon International Port of Coos Bay's (Port) permit application requesting Department of the Army authorization to replace dock pilings along South Slough and Joe Ney Slough, Mile 1 0-1.6, near Charleston, Coos County, Oregon The project site is in Section 12 of Township 26 South, Range 14 West

The damaged and loose pilings at the South Slough and Joe Ney Slough will be removed and replaced with new steel pilings to stabilize the docks The project details are shown in the enclosed drawings (Enclosure 1).

The South Slough and Joe Ney Slough and its tributaries support salmonid species protected under the essential fish habitat (EFH) as designated under the Magnuson-Stevens Fishery Conservation and Management Act This Act requires the Corps to complete consultation with the National Marine Fisheries Service (NMFS) prior to permitting any activity that could affect these species or their critical habitat The scope of work Coos proposes is covered by a programmatic Biological Opinion dated November 30, 2004, and titled *Standard Local Operating Procedures for Endangered Species (SLOPES III) for Certain Regulatory and Operations Activities Carried Out by the Department of the Army Permits in Oregon and the North Shore of the Columbia River*. Coos must comply with all of the Reasonable and Prudent Measures (RPM) and Nondiscretionary Terms and Conditions (T & C) contained in NMFS the opinion (Enclosure 2) [Please note the general terms and conditions of these RPMs cover an array of diverse activities and not all requirements may apply to Coos' particular project]

This letter verifies that Port's project is authorized under the terms and limitations of Regional General Permit (RGP) Category E (Linear Transportation Projects). Port's activities must be conducted in accordance with the conditions found in the Portland District Regional Conditions (Enclosure 3), the 2002 Nationwide Permit and Replacement Regional General Permit General Conditions (Enclosure 4) Port must also comply with the Conditions of the Oregon Department of Environmental Quality (DEQ) Certification (Enclosure 5), the Oregon Department of Land Conservation and Development (DLCD) Compliance Conditions (Enclosure 6), and the project specific conditions lettered (a) through (f) below. **Failure to comply with any of the listed conditions could result in the Corps initiating an enforcement action.**

a Permittee shall notify the Regulatory Branch with the date the activities authorized in waters of the U.S. are scheduled to begin. Notification shall be sent by email to [cenwp\\_notify@usace.army.mil](mailto:cenwp_notify@usace.army.mil) or mailed to the following address:

U.S. Army Corps of Engineers  
Permit Compliance, Coos County  
1600 Executive Parkway Suite 210  
Eugene, Oregon 97401-2156

The subject line of the message shall contain the name of the county in which the project is located followed by the Corps of Engineers permit number.

b. Permittee shall fully implement all T&C's as applicable to the permitted activity in RPM Nos 2 and 9 of the SLOPES III programmatic Biological Opinion dated November 30, 2004 (Enclosure 2). [Please note the general terms and conditions of these RPMs cover an array of diverse activities and not all requirements may apply to Port's particular project].

c Permittee shall ensure that if a treated wood piling breaks during removal, the stump is either removed by breaking or cutting three feet below the sediment surface, or by pushing the stump in to that depth, then covering it with a cap of clean substrate appropriate. Holes left by each piling removed will be filled with clean, native sediments, whenever feasible

d Permittee shall remove pilings with a vibratory hammer. Hydraulic water jets shall not be used to remove piles.

e. Permittee shall ensure that no building debris material will enter the waterway during removal of above-water parts including deteriorated stairs and walkways

f Permittee shall ensure that all pilings installed or replaced will be capped with bird excluder devices.

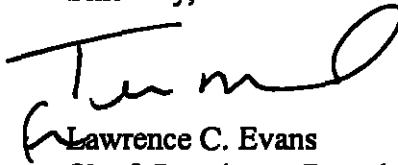
We direct your attention to the Portland District Regional Conditions (Enclosure 3) that requires the transfer of this permit if the property is sold, and General Condition No. 14 of the 2002 Nationwide Permit and Replacement Regional General Permit Conditions (Enclosure 4) that requires you to submit a signed certificate when the work is completed. A SLOPES Project Completion Form is provided (Enclosure 7)

This authorization does not obviate the need to obtain other permits where required Permits, such as those required from the Oregon Department of State Lands (ODSL) under Oregon's Removal /Fill Law, must also be obtained before work begins.

This verification is valid for a period of two years from the date of this letter unless the RGP expires, is modified, reissued, or revoked prior to that date. This RGP is scheduled to be modified, reissued, or revoked in January 2008. If Port commences or under contract to commence this activity before the date the RGP expires, is modified, or revoked, you will have 12 months from the date of the modification or revocation to complete the activity under the present terms and conditions of the current RGP.

If Port has any questions regarding this RGP verification, please contact Mr. Benny Dean Jr. at the letterhead address, by telephone at (541) 465-6761, or email [benny.a.dean@nwp01.usace.army.mil](mailto:benny.a.dean@nwp01.usace.army.mil).

Sincerely,

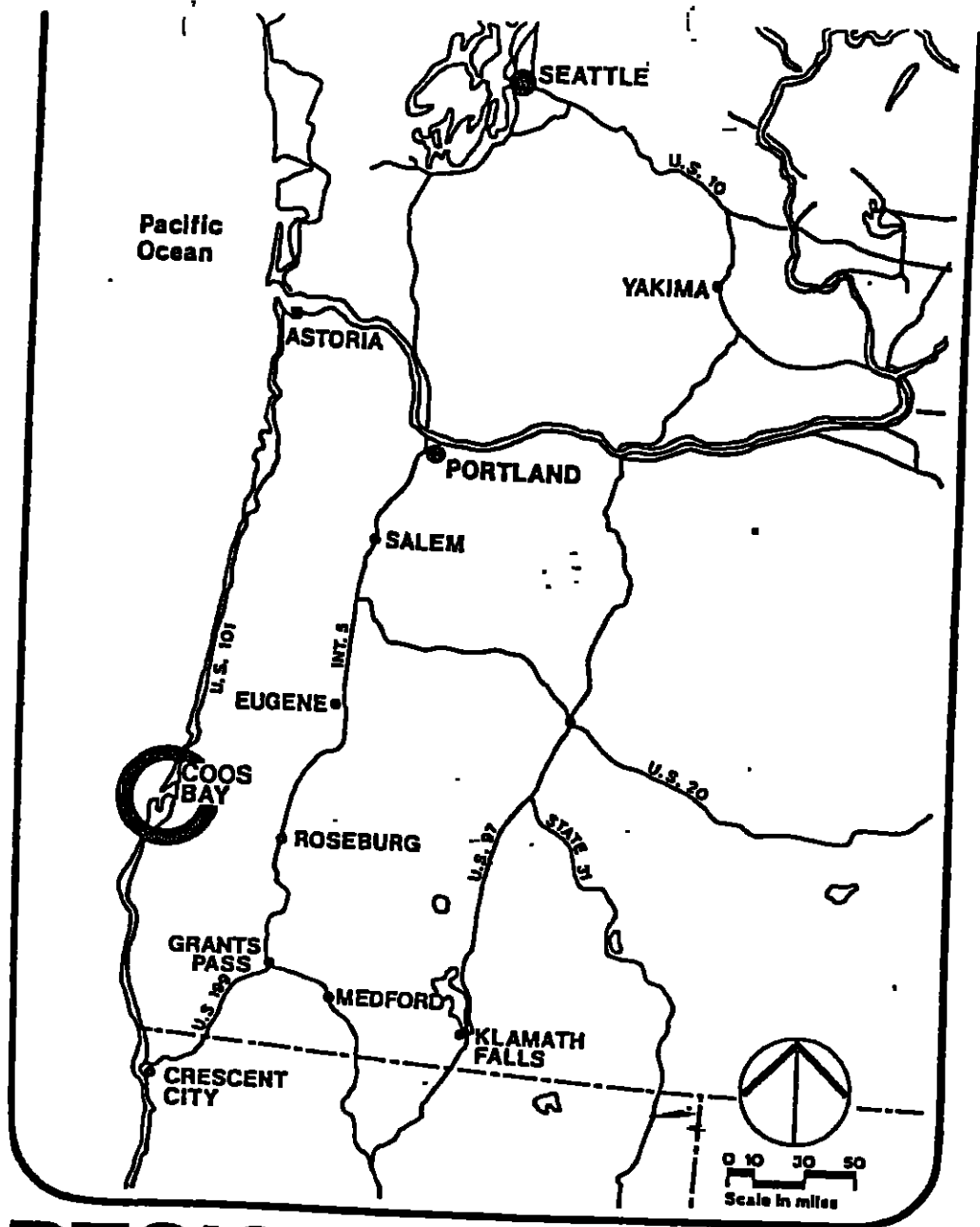


Lawrence C. Evans  
Chief, Regulatory Branch

Enclosures

Copy Furnished:

Oregon Department of State Lands (Lobdell)  
Oregon Department of Environmental Quality (Cyril)  
Oregon Department of Land Conservation and Development (Charland)

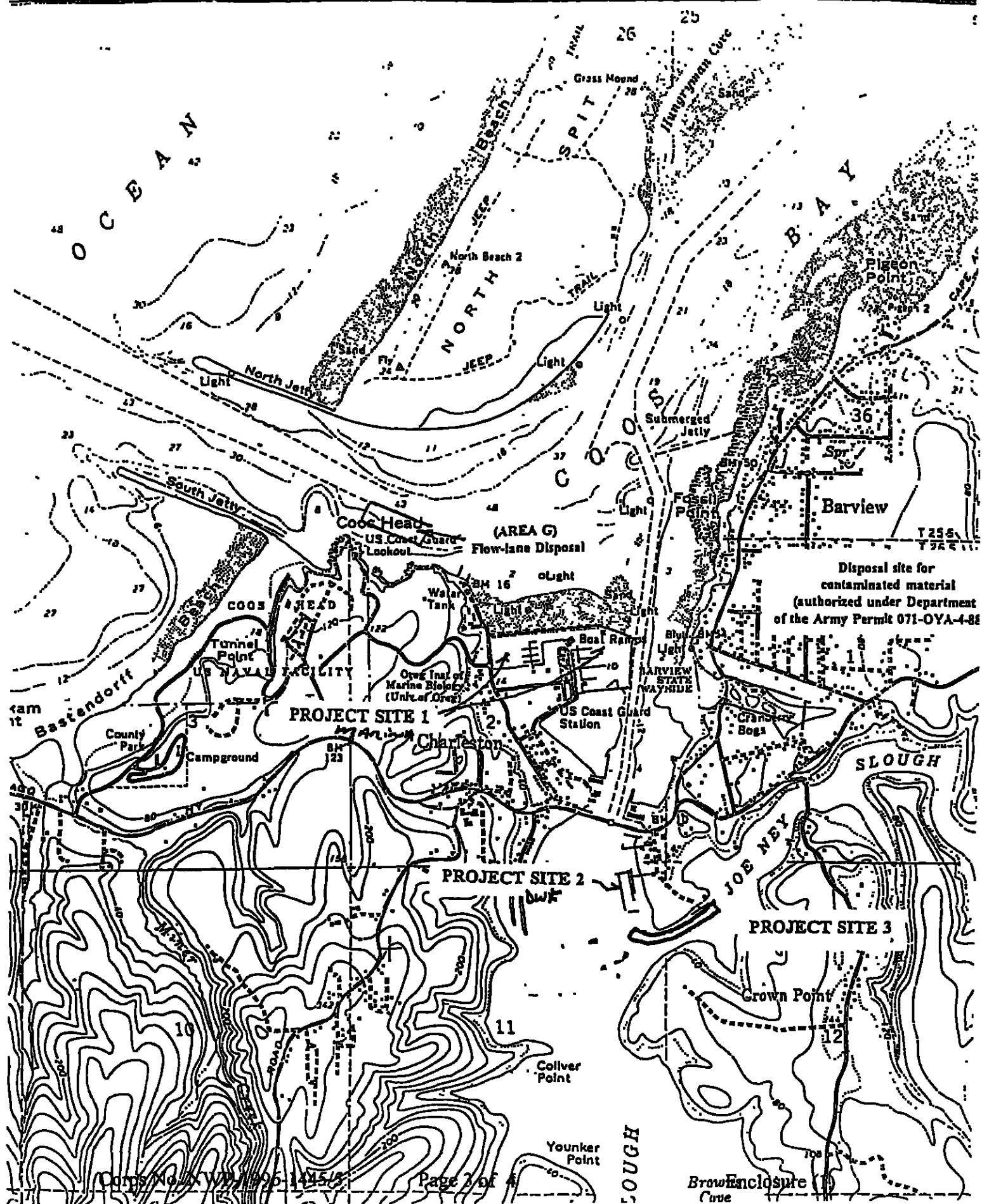


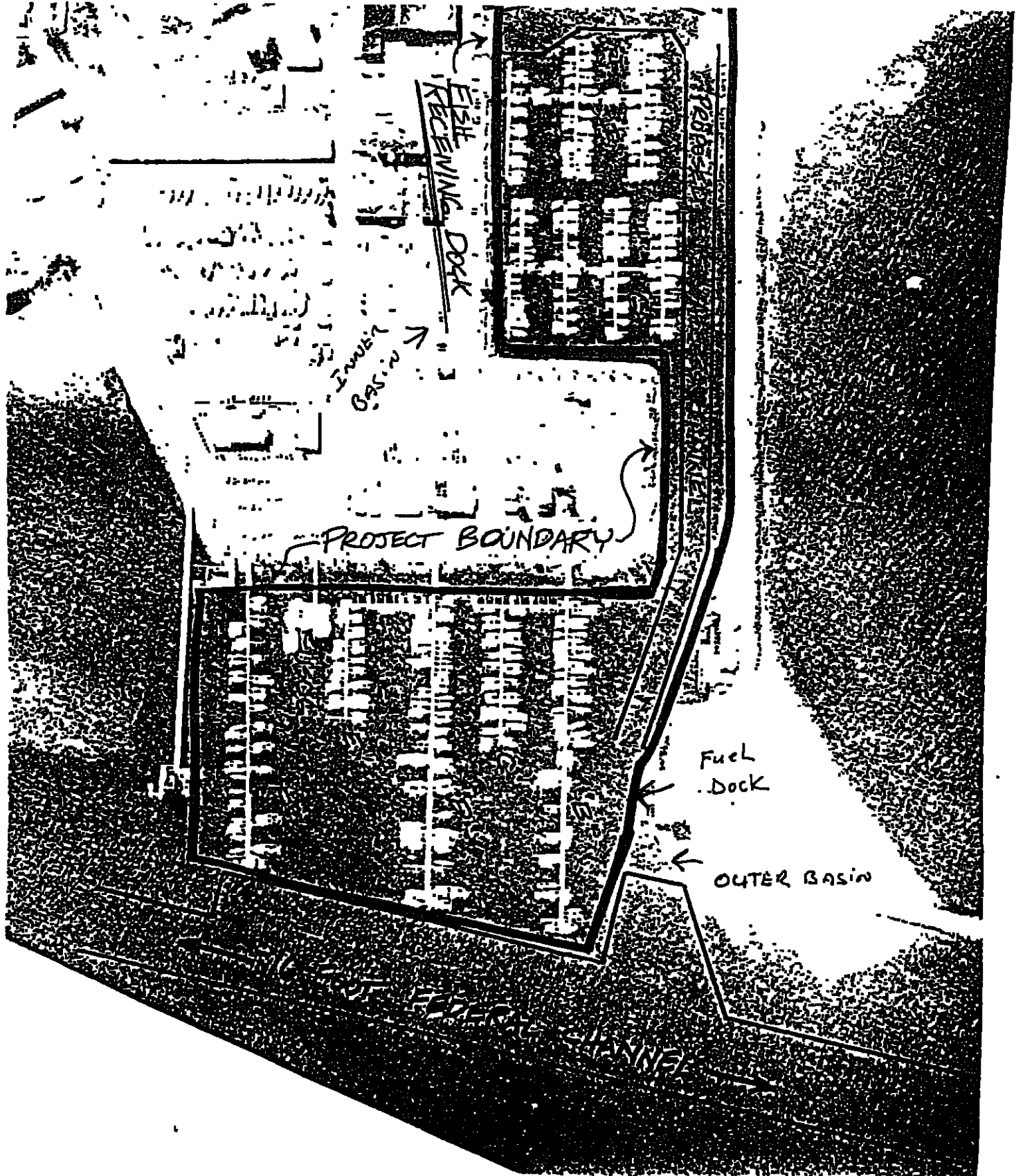
# REGIONAL MAP

Figure 1

9473 (Coos Bay/South Slough -







**Programmatic Biological and Conference Opinion and  
Magnuson-Stevens Fishery Conservation and Management Act  
Essential Fish Habitat Consultation for Revised  
Standard Local Operating Procedures for Endangered Species (SLOPES III)  
to Administer Certain Activities Authorized or Carried Out by the  
Department of the Army in the State of Oregon and on  
the North Shore of the Columbia River, issued by  
National Marine Fisheries Service (NMFS) on November 30, 2004.**

**Terms and Conditions**

To be exempt from the prohibitions of section 9 of the Endangered Species Act (ESA), the U.S. Army Corps of Engineers (Corps) must comply with the following Terms and Conditions, which implement the Reasonable and Prudent Measures described above. These Terms and Conditions are non-discretionary and are applicable to more than one category of activity. Therefore, Terms and Conditions listed for one type of activity are also Terms and Conditions of any category in which they would also minimize take of listed species or their habitats.

**To implement Reasonable and Prudent Measure #2** (general conditions for surveying, exploration, construction, operation, and maintenance), the U.S. Army Corps of Engineers (Corps) shall ensure that

- a. **Exclusions** Any exploration or construction activity, including surface water diversion and release of construction discharge water within 300 feet upstream from any occupied redd until fry emerge or within 300 feet of native submerged aquatic vegetation is not authorized by this Opinion, unless otherwise approved in writing by NMFS. Requests for approval should be submitted with the project notification form. Permits for the following types of exploration, construction, and mitigation actions are not authorized by this Opinion.
  - i. Use of pesticides.
  - ii. Use of short pieces of plastic ribbon to determine flow patterns.
  - iii. Temporary roads or drilling pads built on steep slopes where grade, soil types, or other features suggest a likelihood of excessive erosion or failure.
  - iv. Exploratory drilling in estuaries that cannot be conducted from a work barge or an existing bridge, dock, or wharf
  - v. Installation of a fish screen on any permanent water diversion or intake that is not already screened.
  - vi. Any projects that require in-water installation of hollow steel piling greater than 24-inches in diameter or use of H-pile larger than designation HP24.
  - vii. Drilling or sampling in an EPA-designated Superfund Site, a state-designated cleanup area, or the likely impact zone of a significant contaminant source, as identified by historical information or the Corps' best professional judgment.
  - viii. Compensatory mitigation actions that require construction of permanent structures, maintenance beyond the establishment period or after the performance standards have been met, or creation of habitat functions where they did not historically exist, or that simply preserve existing functions.
- b. **Pollution and Erosion Control Plan.** A pollution and erosion control plan must be prepared and carried out to prevent pollution caused by surveying or construction operations. The pollution and erosion control plan must be commensurate with the scale of the project, contain pertinent elements listed below, and meet requirements of all applicable laws and regulations. Submit an electronic copy of this plan with the project notification form.



- i. Goal. The goal is to avoid or minimize the adverse effects of pollution and erosion by limiting soil disturbance, scheduling work when the fewest number of fish are likely to be present, managing likely pollutants, and limiting the harm that may be caused by accidental discharges of pollutants and sediment.
- ii. Responsible Party. The name, address, and telephone number of the person responsible for accomplishment of the pollution and erosion control plan.
- iii. Minimum Area. Practices to confine vegetation removal and soil disturbance to the minimum area necessary to complete the project and otherwise prevent erosion and sedimentation associated with access roads, stream crossings, drilling sites, construction sites, borrow pit operations, haul roads, equipment and material storage sites, fueling operations, staging areas, and roads being decommissioned.
- iv. In-water Work Timing. Develop a schedule to complete all work below ordinary high water, except hydraulic and topographic measurements within the wetted channel,<sup>1</sup> inside the most recent Oregon Department of Fish & Wildlife (ODFW) or the Corps Seattle District preferred in-water work period,<sup>2</sup> as appropriate for the project area unless otherwise approved in writing by NMFS. Requests for approval should be submitted with the project notification form
- v. Cease Work During High Flows. Project operations must cease under high flow conditions that may inundate the project area except for efforts to avoid or minimize resource damage.
- vi. Concrete, Cement, and Grout. Practices to confine, remove, and dispose of excess concrete, cement, grout, and other mortars or bonding agents, including measures for washout facilities.
- vii. Construction Debris. Practices to prevent construction debris from dropping into any stream or waterbody and to remove any material that does drop with a minimum disturbance to the streambed and water quality.
- viii. Hazardous Materials. A description of any regulated or hazardous products or materials that will be used for the project including procedures for inventory, storage, handling, and monitoring.
- ix. Spill Containment. A spill containment and control plan with notification procedures, specific cleanup and disposal instructions for different products, a description of quick response containment and cleanup supplies that will be available on the site, including a supply of sediment control materials (e.g., a silt fence, straw bales,<sup>3</sup> an oil absorbing, floating boom whenever surface water is present), proposed methods for disposal of spilled materials, and employee training for spill containment.

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<sup>1</sup> Hydraulic and topographic measurements within the wetted channel may be completed anytime except during the spawning period, unless a fisheries biologist verifies that no redds are occupied within 300 feet downstream from the measurement site

<sup>2</sup> ODFW, Oregon Guidelines for Timing of In-water Work to Protect Fish and Wildlife Resources (June 2000) at [http://www.dfw.state.or.us/lands/0600\\_inwtrguide.pdf](http://www.dfw.state.or.us/lands/0600_inwtrguide.pdf) and U S Army Corps of Engineers, Seattle District Regulatory Branch, Allowable Work Windows at [http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=work\\_windows](http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=work_windows) as amended

<sup>3</sup> When available, certified weed-free straw or hay bales must be used to prevent introduction of noxious weeds

- c. **Work Area Isolation Plan.** Except for piling installation<sup>4</sup> completed in compliance with all other relevant terms and conditions, a work area isolation plan must be prepared and carried out for any project that requires work below ordinary high water where adult or juvenile fish are reasonably certain to be present or 300 feet or less upstream from spawning habitats, unless otherwise approved in writing by NMFS. The work area isolation plan must be commensurate with the scale of the project, contain the pertinent elements listed below, and meet requirements of all applicable laws and regulations. Submit an electronic copy of this plan with the project notification form.
- i. **Goal.** The goal to minimize the adverse effects of erosion and other types of pollution by removing from flowing water and fish from the work area.
  - ii. **Responsible Party.** The name and address of the person responsible for meeting each component of the work area isolation plan including a fishery biologist experienced with work area isolation and competent to ensure the safe handling of all ESA-listed fish that will be responsible for the capture and release operation.
  - iii. **Flow Conditions.** An estimate of the range of flows likely to occur during isolation
  - iv. **Plan View.** A plan view of all isolation elements and fish release areas.
  - v. **Equipment and Materials List.** A list of equipment and materials that are necessary to complete work area isolation including fish screen for any pump used to dewater the isolation area, and that will be available onsite to provide appropriate redundancy of key plan functions (*e.g.*, operational, properly-sized, back-up pumps and generators).
  - vi. **Sequence and Schedule.** The sequence and schedule of dewatering and rewatering activities.
- d. **Capture and Release.** Before and intermittently during isolation of an in-water work area, fish trapped in the area must be captured using a trap, seine, electrofishing, or other methods as are prudent to minimize risk of injury, then released at a safe release site.
- i. Do not use electrofishing if water temperatures exceed 18°C or are expected to rise above 18°C, unless no other method of capture available.
  - ii. If electrofishing equipment is used to capture fish, comply with NMFS' electrofishing guidelines<sup>5</sup>
  - iii. Handle ESA-listed fish with extreme care keeping fish in water to the maximum extent possible during seining and transfer procedures to prevent the added stress of out-of-water handling
  - vi. Ensure water quality conditions are adequate in buckets or tanks used to transport fish by providing circulation of clean, cold water using aerators to provide dissolved oxygen and minimizing holding times.
  - v. Release fish into a safe release site as quickly as possible and as near as possible to capture sites.
  - vi. Do not transfer the ESA-listed fish to anyone except NMFS personnel unless otherwise approved in writing by NMFS. Requests for approval should be submitted with the project notification form.
  - vii. Obtain all other Federal, state, and local permits necessary to conduct the capture and release activity.

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<sup>4</sup> Pilings may be installed without work isolation provided all other relevant terms and conditions are met

<sup>5</sup> National Marine Fisheries Service Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (June 2000) (<http://www.nwr.noaa.gov/ESA-Salmon-Regulations-Permits/4d-Rules/upload/electro2000.pdf>)

- viii Allow NMFS or its designated representative to accompany the capture team during the capture and release activity and to inspect the team's capture and release records and facilities.
- ix. Submit an electronic copy of the Salvage Report Form (Appendix B) to NMFS at [slopes.nwr@noaa.gov](mailto:slopes.nwr@noaa.gov) within 10 calendar days of completion of the salvage operation.
- e. **Fish Passage.** Safe passage around or through the project area must be provided for any adult and juvenile salmon or steelhead species present during construction unless passage did not previously exist or as otherwise approved in writing by NMFS. Requests for approval should be submitted with the project notification form.
  - i. Fish ladders (*e.g.*, pools and weirs, vertical slots, Denil fishways) and fish trapping systems are not authorized by this Opinion.
  - ii. After project completion, adult and juvenile passage upstream and downstream must not be impaired for the life of the project.
- f. **Stormwater Management Plan** A stormwater management plan must be prepared and carried out for any project that will produce any new impervious surface or a land cover that will slow the entry of water into the soil. The stormwater management plan must be commensurate with the scale of the projects, contain the pertinent elements listed below, and meet requirements of all applicable laws and regulations. Submit an electronic copy of this plan with the project notification form.
  - i. **Goal.** The goal is to minimize adverse effects due to the quantity and quality of stormwater runoff for the life of the project by maintaining or restoring natural runoff conditions.
  - ii. **Responsible Party** The name, address, and telephone number of the person responsible for accomplishment of the stormwater management plan.
  - iii. **Management Practices and Facilities** A system of management practices and if necessary, structural facilities designed to complete the following functions.
    - (1) Minimize, disperse, and infiltrate stormwater runoff onsite using sheet flow across permeable vegetated areas to the maximum extent possible without causing flooding, erosion impacts, or long-term adverse effects to groundwater.
    - (2) Pre-treat stormwater from pollution generating surfaces including bridge decks before infiltration or discharge into a freshwater system, as necessary to minimize any nonpoint source pollutant (*e.g.*, debris, sediment, nutrients, petroleum hydrocarbons, metals) likely to be present in the volume of runoff predicted from a six-month, 24-hour storm.<sup>6</sup>
    - (3) Ensure that the duration of post project discharge matches the predeveloped discharge rates from 50 percent of the two-year peak flow up to the 50-year peak flow.
  - iv. **Continuous Rainfall/Runoff.** For projects that require engineered water quality or detention facilities to meet stormwater requirements, use a continuous rainfall/runoff model if available for the project area to calculate stormwater facility water quality and flow control rates.
  - iv. **Permeable Pavements.** Use permeable pavements for load-bearing surfaces including multiple-use trails to the maximum extent feasible based on soil, slope, and traffic conditions.

<sup>6</sup> A six-month, 24-hour storm may be assumed to be 72 percent of the two-year, 24-hour amount. See, Washington State Department of Ecology (2001), Appendix I-B-1

- vi. Facilities Inside the Riparian Management Area. Install structural facilities outside wetlands or the riparian management area<sup>7</sup> whenever feasible; otherwise provide compensatory mitigation to offset any long-term adverse effects. Identify the location of all stormwater facilities relative to the riparian management area.
- vii. Recordkeeping. Document completion of the following activities according to a regular schedule for the operation, inspection, and maintenance of all structural facilities and conveyance systems in a log available for inspection on request by the Corps and NMFS.
  - (1) Inspect and clean each facility as necessary to ensure that the design capacity is not exceeded, heavy sediment discharges are prevented, and whether improvements in operation and maintenance are needed.
  - (2) Promptly repair any deterioration threatening the effectiveness of any facility
  - (3) Post and maintain a warning sign on or next to any storm drain inlet as appropriate for the receiving water that says, "Dump No Waste – Drains to Groundwater, Streams, or Lakes."
  - (4) Only dispose of sediment and liquid from any catch basin in an approved facility.
- viii. Runoff/Discharge into a Freshwater System. When stormwater runoff will be discharged directly into surface water or a wetland, or indirectly through a conveyance system, the following requirements apply
  - (1) Maintain natural drainage patterns and whenever possible ensure that discharges from the project site occur at the natural location
  - (2) Use a conveyance system comprised entirely of manufactured elements (e.g., pipes, ditches, outfall protection) that extends to the ordinary high water line of the receiving water unless existing topography and vegetative site conditions will provide adequate biofiltration to remove likely sediment and other pollutants.
  - (3) Stabilize any erodible elements of this system as necessary to prevent erosion
  - (4) Do not divert surface water from or increase discharge to an existing wetland if that will cause a measurable or detectable adverse effect to wetland hydrology, soils, or vegetation
  - (5) The velocity of discharge water released from an outfall or diffuser port may not exceed four feet per second, and the maximum size of any aperture may not exceed one inch
- g. Site Restoration Plan. A site restoration plan must be prepared and carried out to ensure that all streambanks, soils, and vegetation disturbed by the project are cleaned up and restored as follows. The site restoration plan must be commensurate with the scale of the project, contain the pertinent elements listed below, and meet requirements of all applicable laws and regulations. Submit an electronic copy of this plan with the project notification form

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<sup>7</sup> "Riparian management area" means land, (1) within 150 feet of any natural water occupied by listed salmonids during any part of the year or designated as critical habitat, (2) within 100 feet of any natural water within one-fourth mile upstream from areas occupied by listed salmonids or designated as critical habitat and that is physically connected by an above-ground channel system such that water, sediment, or woody material delivered to such waters will eventually be delivered to water occupied by listed salmon or designated as critical habitat, and (3) within 50 feet of any natural water upstream from areas occupied by listed salmonids or designated as critical habitat and that is physically connected by an above-ground channel system such that water, sediment, or woody material delivered to such waters will eventually be delivered to water occupied by listed salmon or designated as critical habitat. "Natural water" means all perennial or seasonal waters except water conveyance systems that are artificially constructed and actively maintained for irrigation

Corps No NWP-1996-1445/5                      Page 5 of 16                      Enclosure (2)

- i. **Goal.** The goal is to reestablish habitat access, water quality, and production of habitat elements (e.g., large wood), channel conditions, flows, watershed conditions, and other aquatic habitat forming processes that were harmed during project completion.
- ii. **Responsible Party.** The name, address, and telephone number of the person responsible for accomplishment of the site restoration plan including providing and managing any financial assurances and monitoring necessary to ensure restoration success.
- iii. **Baseline Information.** This information may be obtained from existing sources (e.g., land use plans, watershed analyses, subbasin plans), where available.
  - (1) A functional assessment of adverse effect, i.e., the location, extent and function of the riparian and aquatic resources that will be adversely affected by construction and operation of the project.
  - (2) The location and extent of resources surrounding the restoration site including historic and existing conditions
- iv. **Objectives.** Restoration objectives that describe the extent and methods of site restoration necessary to offset adverse effects of the project by aquatic resource type.
  - (1) Restore damaged streambanks to a natural slope, pattern, and profile suitable for establishment of permanent wood vegetation unless precluded by pre-project conditions (e.g., a natural rock wall).
  - (2) Replant each area requiring revegetation before the first April 15 following construction. Use a diverse assemblage of species native to the project area or region including grasses, forbs, shrubs, and trees. Noxious or invasive species may not be used.
  - (3) Use as much as possible of the large wood, native trees, native vegetation, topsoil, and native channel material that was stockpiled during site preparation.
  - (4) Do not apply surface fertilizer within 50 feet of any stream channel.
  - (5) Install fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons
- v. **Performance Standards.** Use the following standards to help design the plan and assess whether the restoration goal is met. While no single criterion is sufficient to measure success, the intent is that these features should be present within reasonable limits of natural and management variation
  - (1) Human and livestock disturbance if any is confined to small areas necessary for access or other special management situations.
  - (2) Areas with signs of significant past erosion are completely stabilized and healed; bare soil spaces are small and well dispersed.
  - (3) Soil movement such as active rills and soil deposition around plants or in small basins is absent or slight and local.
  - (4) Native woody and herbaceous vegetation, and germination microsites are present and well distributed across the site.
  - (5) Plants have normal, vigorous growth form and a high probability of remaining vigorous, healthy, and dominant over undesired competing vegetation.
  - (6) Vegetation structure is resulting in rooting throughout the available soil profile.
  - (7) Plant litter is well distributed and effective in protecting the soil with little or no litter accumulated against vegetation as a result of active sheet erosion ("litter dams").
  - (8) A continuous corridor of shrubs and trees appropriate to the site are present to provide shade and other habitat functions for the entire streambank.
  - (9) Streambanks are stable, well vegetated, and protected at margins by roots that extend below baseflow elevation or by coarse-grained alluvial debris.
- vi. **Work Plan** Develop a work plan with sufficient detail to include a description of the following elements as applicable:

- (1) Water supply source if necessary.
  - (2) Boundaries for the restoration area
  - (3) Restoration methods, timing, and sequence.
  - (4) Geomorphology and habitat features of stream or other open water.
  - (5) Site management and maintenance requirements including a plan to control exotic invasive vegetation.
  - (6) Elevation and slope of the restoration area to ensure they conform to required elevation and hydrologic requirements of target plant species.
  - (7) Woody native vegetation appropriate to the restoration site.<sup>8</sup> This must be a diverse assemblage of species that are native to the project area or region including grasses, forbs, shrubs, and trees. This may include allowances for natural regeneration from an existing bank or planting.
- vii. **Five-Year Monitoring and Maintenance Plan.** Develop a five-year monitoring and maintenance plan with the following elements as applicable:
- (1) A schedule to visit the restoration site annually for five years or longer as necessary to confirm that the performance standards are achieved. Despite the initial five-year planning period, site visits and monitoring must continue from year to year until the Corps certifies that site restoration performance standards have been met.
  - (2) During each visit, inspect for and correct any factors that may prevent attainment of performance standards (*e.g.*, low plant survival, invasive species, wildlife damage, drought).
  - (3) Keep a written record to document the date of each visit, site conditions, and any corrective actions taken.
- h **Compensatory Mitigation Plan** A compensatory mitigation plan must be prepared and carried as necessary to ensure the project does not cause a long-term loss of riparian or aquatic functions. The compensatory mitigation plan must be commensurate with the scale of the project, contain the pertinent elements listed below, and meet requirements of all applicable laws and regulations. Submit an electronic copy of this plan with the project notification form
- i **Actions of Concern.** The following actions require a Compensatory Mitigation Plan to offset long-term adverse effects:
    - (1) Riparian and aquatic habitats displaced by construction of structural stormwater facilities, a new or enlarged boat ramp, or scour protection
    - (2) Riparian and benthic habitat displaced by new or enlarged over-water structures
    - (3) Other activities that prevent development of properly functioning riparian and aquatic habitat processes.
  - ii **Goal.** The goal is to ensure that completion of the project does not cause a net loss of riparian and aquatic habitat functions.
  - iii **Responsible Party.** The name, address, and telephone number of the person responsible for accomplishment of the compensatory mitigation plan including providing and managing any financial assurances and monitoring necessary to ensure compensatory mitigation success.
  - iv **Objectives.** Compensatory mitigation objectives related to the extent and type of compensatory mitigation necessary to offset unavoidable losses to riparian and aquatic habitat at the project site.
    - (1) Elements of a site restoration plan outline above.
    - (2) Watershed-level considerations related to specific aquatic resource needs of the affected area

<sup>8</sup> Use reference sites to select vegetation for the mitigation site whenever feasible. Historic reconstruction, vegetation models, or other ecologically-based methods may also be used as appropriate

- (3) Existing technology and logistical concerns.
- (4) A description of the legal means for protecting mitigation areas, and a copy of any legal instrument relied on to secure that protection.
- (5) Make mitigation compatible with adjacent land uses or if necessary use an upland buffer to separate mitigation areas from developed areas or agricultural lands.
- (6) Base the level of required mitigation on a functional assessment of adverse effects of the proposed project and functional replacement (*i.e.*, "no net loss of function"), whenever feasible or a minimum one-to-one linear foot or acreage replacement.
- (7) Acceptable mitigation includes reestablishment or rehabilitation of natural or historic habitat functions when self-sustaining, natural processes are used to provide the functions.
- (8) Whenever feasible, complete mitigation before or concurrent with project construction to reduce temporal loss of aquatic functions and simplify compliance.
- (9) When project construction is authorized before mitigation is completed, the applicant must show that a mitigation project site has been secured and appropriate financial assurances in place.
  - (a) Complete all work necessary to carry out the mitigation plan no later than the first full growing season following the start of project construction whenever feasible.
  - (b) If beginning the initial mitigation actions within that time is infeasible, then include other measures that mitigate for the consequences of temporal losses in the mitigation plan.
- (10) Actions to complete a mitigation plan that require a Corps permit must also meet all applicable terms and conditions for this Opinion or complete a separate consultation.

I **Surface Water Diversion.** Surface water may be diverted consistent with Oregon law to meet construction needs only if water from sources that are already developed such as municipal supplies, small ponds, reservoirs, or tank trucks is unavailable or inadequate.

- i. **Alternative Sources.** When alternative surface sources are available, diversion shall be from the stream with greatest flow.
- ii. **Fish Screen.** A temporary fish screen must be installed, operated, and maintained according to NMFS fish screen criteria on any surface water diversion used to meet construction needs.
- iii. **Rate and Volume.** The rate and volume of pumping will not exceed 10 percent of the available flow. For streams with less than five cubic feet per second, drafting will not exceed 18,000 gallons per day and no more than one pump will be operated per site.

J **Construction Discharge Water.** All discharge water created by construction (*e.g.*, concrete washout, pumping for work area isolation, vehicle wash water, drilling fluids) must be treated as follows:

- i. **Water Quality Treatment.** Design, build, and maintain facilities to collect and treat all construction and drilling discharge water using the best available technology applicable to site conditions to remove debris, nutrients, sediment, petroleum products, metals, and other pollutants likely to be present.
- ii. **Return Flow.** If construction discharge water is released using an outfall or diffuser port, velocities may not exceed four feet per second, and the maximum size of any aperture may not exceed one inch.

- iii. Pollutants. Do not allow pollutants such as green concrete, contaminated water, silt, welding slag, sandblasting abrasive, or grout cured less than 24 hours to contact any waterbody, wetland, or stream channel below ordinary high water
- iv. Drilling Waste Containment. All drilling equipment, drill recovery, recycling pits, and any waste or spoil produced must be contained as necessary to prevent any drilling fluids or other wastes from entering the stream.
  - (1) All drilling fluids and waste must be completely recovered then recycled or disposed to prevent entry into flowing water
  - (2) Drilling fluids must be recycled using a tank instead of drill recovery/recycling pits whenever feasible.
  - (3) When drilling is completed, try to remove the remaining drilling fluid from the sleeve (e.g., by pumping) to reduce turbidity when the sleeve is removed.
- k. Heavy Equipment Use of heavy equipment is restricted as follows:
  - i. Choice of Equipment. When heavy equipment will be used, the equipment selected must have the least adverse effects on the environment (e.g., minimally sized, low ground pressure equipment).
  - ii. Vehicle and Material Staging. Store construction materials and fuel and operate, maintain, and store vehicles as follows:
    - (1) To reduce the staging area and likelihood of contamination, ensure that only enough supplies and equipment to complete a specific job will be stored onsite
    - (2) Complete vehicle staging, cleaning, maintenance, refueling, and fuel storage in a vehicle staging area placed 150 feet or more from any stream, waterbody, or wetland unless otherwise approved in writing by NMFS. Requests for approval should be submitted with the project notification form.
    - (3) Inspect all vehicles operated within 150 feet of any stream, waterbody, or wetland daily for fluid leaks before leaving the vehicle staging area. Repair any leaks detected in the vehicle staging area before the vehicle resumes operation. Document inspections in a record that is available for review on request by the Corps or NMFS.
    - (4) Before operations begin and as often as necessary during operation, steam clean all equipment that will be used below ordinary high water until all visible external oil, grease, mud, and other visible contaminants are removed. Complete all cleaning in the staging area.
    - (5) Diaper all stationary power equipment (e.g., generators, cranes, and stationary drilling equipment) operated within 150 feet of any stream, waterbody, or wetland to prevent leaks unless suitable containment is provided to prevent likely spills from entering any stream or waterbody.
- l. Pre-construction Activity. The following actions must be completed before significant<sup>9</sup> alteration of the project area.
  - i. Marking. Flag the boundaries of clearing limits associated with site access and construction to prevent ground disturbance of critical riparian vegetation, wetlands, areas below ordinary high water, and other sensitive sites beyond the flagged boundary.

<sup>9</sup> "Significant" means an effect can be meaningfully measured, detected, or evaluated.



- ii **Temporary Erosion Controls.** All temporary erosion controls must be in place and appropriately installed downslope of project activity until site restoration is complete
- m. **Site Preparation.** Native materials including large wood, native vegetation, weed-free topsoil, and native channel materials (gravel, cobble, and boulders) disturbed during site preparation must be conserved onsite for site restoration.
  - i. If possible, leave native materials where they are found. In areas to be cleared, clip vegetation at ground level to retain root mass and encourage reestablishment of native vegetation.
  - ii. If native materials are moved, damaged, or destroyed, replace them with a functional equivalent during site restoration.
  - iii. Stockpile all large wood<sup>10</sup> taken from below ordinary high water and from within 150 feet of a stream, waterbody, or wetland, native vegetation, weed-free topsoil, and native channel material displaced by construction for use during site restoration.
  - iv. As part of the site restoration, all large wood taken from the riparian zone or stream during construction must be returned to those areas and placed in a natural configuration that may be expected to function naturally.
- n. **Temporary Access Roads and Drilling Pads.** All temporary access roads and drilling pads must be constructed as follows.
  - i. **Existing Ways.** Use existing roadways, travel paths, and drilling pads whenever possible unless construction of a new way or drilling pad would result in less habitat take. When feasible, eliminate the need for an access road by walking a tracked drill or spider hoe to a survey site or lower drilling equipment to a survey site using a crane.
  - ii. **Soil Disturbance and Compaction.** Minimize soil disturbance and compaction whenever a new temporary road or drill pad is necessary within wetlands or the riparian management area by clearing vegetation to ground level and placing clean gravel or geotextile fabric unless otherwise approved in writing by NMFS. Requests for approval should be submitted with the project notification form.
  - iii. **Temporary Stream Crossings.**
    - (1) Minimize the number of temporary stream crossings
    - (2) Design temporary road crossings as follows
      - (a) A qualified fish biologist will survey and map spawning habitat, any occupied spawning redds, and native submerged aquatic vegetation within 300 feet upstream downstream and 100 feet upstream from a proposed crossing.
      - (b) Do not place a stream crossing within 300 feet downstream or 100 feet upstream from any occupied redd until fry emerge or within 300 feet of native submerged aquatic vegetation.
      - (c) Design the crossing to provide for foreseeable risks (e.g., flooding and associated bedload and debris to prevent the diversion of streamflow out of the channel and down the road if the crossing fails).

<sup>10</sup> "Large wood" means a tree, log, or redwood big enough to dissipate stream energy associated with high flows, capture bedload, stabilize streambanks, influence channel characteristics, and otherwise support aquatic habitat function, given the slope and bankfull channel width of the stream in which the wood occurs. See Oregon Department of Forestry and ODFW, "A Guide to Placing Large Wood in Streams, May 1995, <http://www.nw.usace.army.mil/html/offices/op/rf/SI.OPES/WoodPlacmntGuide1995%5B1%5D.pdf>

- (d) Vehicles and machinery must cross riparian areas and stream at right angles to the main channel wherever possible.
- iv Obliteration. When the project is complete, obliterate all temporary access roads that will not be in footprint of a new bridge or other permanent structure, stabilize the soil, and revegetate the site.
- o. Earthwork. Earthwork including drilling, excavation, dredging, filling, and compacting must be completed as quickly as possible.
  - i Site Stabilization. Stabilize all disturbed areas including obliteration of temporary roads following any break in work unless construction will resume within four days.
  - ii. Inspection of Erosion Controls. Monitor instream turbidity and inspect all erosion controls daily during the rainy season, weekly during the dry season, or more often as necessary to ensure the erosion controls are working adequately.<sup>11</sup>
    - (1) If monitoring or inspection shows that the erosion controls are in effective, immediately mobilize work crews to repair, replace, or reinforce controls as necessary.
    - (2) Remove sediment from erosion controls before it reaches one-third of the exposed height of the control.
  - iii. Drilling, Boring, Jacking. If drilling, boring, or jacking is used, the following conditions apply.
    - (1) Isolate drilling operations in wetted stream channels using a steel pile, sleeve, or other appropriate isolation method to prevent drilling fluids from contacting water.
    - (2) If it is necessary to drill through a bridge deck, use containment measures to prevent drilling debris from entering the channel.
    - (3) Sampling and directional drill recovery/recycling pits and any associated waste or spoils must be completely isolated from surface waters, off-channel habitats, and wetlands. All waste or spoils must be covered if precipitation is falling or imminent. All drilling fluids and waste must be recovered and recycled or disposed to prevent entry into flowing water
    - (4) If a drill boring conductor breaks and drilling fluid or waste is visible in a water or a wetland, all drilling activity must cease pending written approval from NMFS to resume drilling.
- p. Treated Wood. Use of lumber, pilings, or other wood products that are treated or preserved with pesticidal compounds (including but not limited to alkaline, copper quaternary, ammoniacal copper arsenate, ammoniacal copper zinc arsenate, copper boron azole, chromated copper arsenate, copper naphthenate, creosote, and pentachlorophenol) may not be used below ordinary high water or as part of an in-water or over-water structure except as described below.
  - i Onsite Storage. Treated wood shipped to the project area must be stored out of contact with standing water and wet soil and protected from precipitation.
  - ii Visual Inspection. Each load and piece of treated wood must be visually inspected and rejected for use in or above aquatic environments if visible residues, bleeding of preservative, preservative-saturated sawdust, contaminated soil, or other matter is present.

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<sup>11</sup> "Working adequately" means that upland work is not contributing visible sediment to water, and in-water work does not increase ambient stream turbidity by more than ten percent above background 100 feet below the discharge, when measured relative to a control point immediately upstream from the turbidity causing activity

- iii. **Pilings.** Pilings treated with ammoniacal copper zinc arsenate, chromated copper arsenate, or creosote may be installed below ordinary high water according to NMFS' guidelines,<sup>12</sup> provided that no more than 50 piles are used. Also note that these guidelines do not apply to pilings treated with any other preservative and do not authorize use of treated wood for any other purpose
- iv. **Prefabrication and Field Preservative Treatment.** Use prefabrication to the extent feasible to ensure that cutting, drilling, and field preservative treatment is minimized. When field fabrication is necessary, all cutting and drilling of treated wood and field preservative treatment of wood exposed by cutting and drilling, will occur above ordinary high water to minimize discharge of sawdust, drill shavings, excess preservative and other debris in riparian, or aquatic habitats. Use tarps, plastic tubs, or similar devices to contain the bulk of any fabrication debris and wipe off any excess field preservative.
- v. **Abrasion Prevention** All treated wood structures including pilings must have design features to avoid or minimize impacts and abrasion by livestock, pedestrians, vehicles, vessels, floats, *etc.*, to prevent the deposition of treated wood debris and dust in riparian or aquatic habitats
- vi. **Waterproof Coating.** Treated wood may be used to construct a bridge, over-water structure, or an in-water structure provided that all surfaces exposed to leaching by precipitation, overtopping waves, or submersion are coated with a waterproof seal or barrier that will be maintained for the life of the project. Coatings and any paint-on field treatment must be carefully applied and contained to reduce contamination. Surfaces that are not exposed to precipitation or wave attack, such as parts of a timber bridge completely covered by the roadway wearing surface of the bridge deck are exempt from this requirement.
- vii. **Debris Removal.** Projects that require removal of treated wood must use the following precautions.
  - (1) Ensure that to the extent feasible, no treated wood debris falls into the water. If treated wood debris does fall into the water, remove it immediately.
  - (2) After removal, place treated wood debris in an appropriate dry storage site until it can be removed from the project area. Do not leave treated wood construction debris in the water or stacked on the streambank at or below the ordinary high water.
  - (3) Evaluate treated wood construction debris removed during a project including treated wood pilings to ensure proper disposal of debris.
- q. **Piling Installation** Hollow steel piling 24 inches in diameter or smaller and H-pile designated as HP24 or smaller may be installed below ordinary high water as follows.
  - i. Minimize the number and diameter of pilings as feasible.
  - ii. Repairs, upgrades, and replacement of existing pilings consistent with these terms and conditions are allowed. In addition, up to five single pilings or one dolphin consisting of three to five pilings may be added to an existing facility per in-water construction period.

<sup>12</sup> Letter from Steve Morris, National Marine Fisheries Service to W B Paynter, Portland District, U.S. Army Corps of Engineers (December 9, 1998) (transmitting a document titled "Position Document for the Use of Treated Wood in Areas within Oregon Occupied by Endangered Species Act Proposed and Listed Anadromous Fish Species," National Marine Fisheries Service, December 1998)

- iii. Whenever feasible, use vibratory hammer for piling installation. Otherwise, use the smallest drop or hydraulic impact hammer necessary to complete the job and set the drop height to the minimum necessary to drive the piling.
- iv. When using an impact hammer to drive or proof steel piles, one of the following sound attenuation devices must be used to reduce sound pressure levels by 20 dB
  - (1) Place a block of wood or other sound dampening material between the hammer and the piling being drive.
  - (2) If water velocity is 1.7 miles per hour or less, surround the piling being driven by an unconfined bubble curtain that will distribute small air bubbles around 100 percent of the piling perimeter for the full depth of the water column.<sup>13</sup>
  - (3) If water velocity is greater than 1.7 miles per hour, surround the piling being driven by a confined bubble curtain (e.g., a bubble ring surrounded by a fabric or metal sleeve) that will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column.
  - (4) Written approval of an alternative sound attenuation plan may be requested with the project notification form, provided the plan will maintain sound pressure levels below 150dB rms (re: 1 micro Pascal) for a minimum of 50 percent of the driver strikes, and peak sound pressure levels below 180dB rms (re: 1 micro Pascal) for all strikes

r **Piling Removal.** If a temporary or permanent piling will be removed, the following conditions apply.

- i. Dislodge the piling with a vibratory hammer, whenever feasible.
- ii Once loose, place the piling onto the construction barge or other appropriate dry storage site.
- iii. If a treated wood piling breaks during removal, either remove the stump by breaking or cutting three feet below the sediment surface or push the stump into that depth, then cover it with a cap of clean substrate appropriate for the site.
- iv. Fill the holes left by each piling with clean, native sediments whenever feasible

<sup>13</sup> For guidance on how to deploy an effective, economical bubble curtain, see Longmuir, C and T Lively, "Bubble Curtain Systems for Use During Marine Pile Driving, Fraser River Pile and Dredge LTD, 1830 River Drive, New Westminster, British Columbia, V3M 2A8, Canada. Recommended components include a high volume air compressor that can supply more than 100 pounds per square inch at 150 cubic feet per minute to a distribution manifold with 1/16 inch diameter air release holes spaced every 3/4-inch along its length. An additional distribution manifold is needed for each 35 feet of water depth

**To implement Reasonable and Prudent Measure #9** (over-water and in-water structures including ports, industrial facilities, and marinas), the Corps shall ensure that.

a. **Exclusions.** Permits for the following types of new or expanded structures, locations for new or expanded structures, and maintenance activities are not authorized by this Opinion.

i. **Excluded Types of New or Expanded Structures**

- (1) Boathouse.
- (2) Boat ramp made of asphalt.
- (3) Buoy or float in an inactive anchorage and fleeting area.
- (4) Covered moorage.
- (5) Floating storage unit.
- (6) Houseboat.
- (7) Marina
- (8) Pier.
- (9) Non-water-related facilities (e.g., parking lots, picnic areas, restrooms) inside the riparian management area.
- (10) Any other over-water structure more than six feet wide unless otherwise approved in writing by NMFS. Requests for approval should be submitted with the project notification form.

ii. **Excluded Locations for New or Expanded Structures**

- (1) Estuarine or saltwater.<sup>14</sup>
- (2) Insufficient flow to dissipate fuels and other pollutants from vessels.
- (3) Within 0.5 miles downstream from the confluence of a spawning tributary.
- (4) An area where a floating dock is likely to ground out or where moored boats will prop wash the bottom.
- (5) Requires pre-construction excavation, routine maintenance dredging (e.g., alcoves, backwater sloughs, side channels, other shallow-water areas), or construction of a breakwater, jetty, or groin.

b. **New Structures, Maintenance, and Replacement Authorized by this Opinion.** New structures may be built and existing structures may be repaired or replaced as follows:

i. **Applicable Terms and Conditions.** Any new over-water or in-water structure, or replacement or upgrade of an existing structure authorized by this Opinion must be consistent with all applicable terms and conditions of this Incidental Take Statement including, but not limited to those that are relevant to monitoring and construction (e.g., project notification, project completion report, minimum area, timing of in-water work, pollution and erosion control, piling installation and removal, treated wood, work area isolation, site restoration, compensatory mitigation).

ii. **Educational Signs.** Because the best way to minimize adverse effects caused by boating is to educate the public about pollution and its prevention, the following information must be posted and maintained on a permanent sign at all public facilities authorized by this Opinion.

- (1) A description of the ESA-listed salmonids, which are or may be present in the project area
- (2) Notice that the adults and juveniles of these species and their habitats are to be protected so that they can successfully migrate, spawn, rear, and complete other behaviors necessary for their recovery.

<sup>14</sup> "Estuary or other saltwater area" means an area with maximum intrusion of more than 0.5 ppt measured at depth, in the Columbia River, this includes all areas downstream from Jim Crow Sands (river mile 27)

- (3) Lack of necessary habitat conditions may result in a variety of adverse effects including direct mortality, migration delay, reduced spawning, loss of food sources, reduced growth, reduced populations, and decreased productivity.
  - (4) All users of the facility are required or encouraged to: (1) follow procedures and rules governing use of sewage pump-out facilities; (2) minimize the fuel and oil released into surface waters during fuelings and from bilges and gas tanks; (3) avoid cleaning boat hulls in the water to prevent the release of cleaner, paint, and solvent; (4) practice sound fish cleaning and waste management, including proper disposal of fish waste, and (5) dispose of all solid and liquid waste produced while boating in a proper facility away from surface waters
- iii. Flotation.
- (1) Permanently encapsulate all synthetic flotation material to prevent breakup into small pieces and dispersal in water.
  - (2) Install small temporary floats less than seven days before a scheduled event, remove them five days after a scheduled event is concluded, and do not leave them in place longer than 21 days total
  - (3) Install mooring buoys and temporary floats (e.g., shellfish traps) more than 300 feet from native submerged aquatic vegetation, more than 50 feet from the shoreline, and in water deeper than 20 feet at all times, or as necessary that gear does not ground out unnecessarily, and boats do not prop wash the bottom
- iv. Access Maintenance. Sediment or other debris including large wood that obstructs or interferes with normal use of an over-water or in-water structure may be removed or excavated as follows provided that the materials are all naturally—occurring; and sediment consists of more than 80 percent sand, gravel, or other naturally—occurring; any sediment consists of more than 80 percent sand, gravel or other naturally—occurring bottom material; and the area to be excavated is not within an EPA-designated Superfund Site, state-designated cleanup area, or the likely impact zone of a significant contaminant source, as identified by historical information on the Corps' best professional judgment.
- (1) Only the minimum amount of sediment and debris necessary to restore normal use may be removed or excavated
  - (2) All sediment and debris must be side cast or returned to the water downstream from the structure where it will continue to provide aquatic habitat function, unless otherwise approved in writing by NMFS. Requests for approval should be submitted with the project notification form.
- v. Boat Ramps. Concrete boat ramps must consist of pre-cast concrete slabs below the ordinary high water, and upland portions of the ramp must be completed in the dry so that no wet concrete that has cured less than 24 hours is allowed to contact any wetland or channel below ordinary high water. Rock may be used to construct a footing or other protection necessary to prevent scouring, downcutting, or failure at the boat ramp provided that the rock does not extend further than four feet from the edge of the ramp in any direction.
- vi. Covered Moorages and Boathouses. Any replacement roof, wall, or garage door for covered moorages and boathouses must be made of translucent materials. In addition, each side (except the door) of the boathouse must have windows at least four feet wide installed the length of the boathouse subject to breaks only for structural support. Skylights (at least two 4-feet by 4-feet) may be installed in the roof in lieu of translucent panels
- vii. Marinas. An existing marina may be modified within the existing footprint of the moorage or in water more than 50 feet from the shoreline and more than 20 feet deep except that structures may not be placed in areas that support aquatic vegetation or areas where boat operations may damage aquatic vegetation.

- viii. **Piscivorous Bird Deterrence.** Fill all pilings, mooring buoys, and navigational aids (*e.g.*, channel markers) with devices to prevent perching by piscivorous birds.

## **Portland District Regional Conditions**

- a **In-Water Work Window:** All in-water work, including temporary fills or structures, shall occur between **October 1** and **February 15** (timeframes are specific to the waterbody) Exceptions to these time periods require specific approval from the Corps
- b **Upland Disposal:** All excess material will be taken to a suitable upland location for disposal. The material shall be placed in a location and manner that prevents its discharge into waterways or wetlands.
- c **Heavy Equipment:** Heavy equipment shall be operated from the bank and not placed in the stream unless specifically authorized by the District Engineer. Heavy equipment must be placed on mats or similar precautions must be taken to minimize damage to wetland resources
- d **Fish Screening:** Fish screening will comply with standards approved by the National Marine Fisheries Service (NMFS) or the Oregon Department of Fish & Wildlife (ODFW), as appropriate
- e **Cultural Resources and Human Burials:** Permittees must immediately notify the District Engineer if at any time during the course of the work authorized, human burials, cultural resources, or historic properties, as identified by the National Historic Preservation Act, may be affected. Failure to stop work in the area of exposure until such time the Corps has complied with the provisions of 33 CFR 325, Appendix C, the National Historic Preservation Act and other pertinent regulations, could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.
- f **Fish Passage:** Permittee shall ensure activities authorized by Nationwide Permit will not restrict passage of aquatic life. Activities such as the installation of culverts or diversion structures, or other modifications to channel morphology must be designed to be consistent with fish passage standards developed by ODFW and NMFS. The standards can be found in the document entitled "ODFW Standards and Criteria for Stream Road Crossings<sup>1</sup>." The streambed shall be returned to preconstruction contours after construction unless the purpose of the activity is to eliminate a fish barrier.
- g **Riparian Vegetation Protection and Restoration:** When working in waters of the United States or riparian areas, the construction boundary shall be minimized to the maximum extent practicable. Permittee shall mark and clearly define the construction boundary before beginning work. Native riparian vegetation will be successfully established along tributaries where the vegetation was removed by construction. The plantings shall start at the ordinary high water mark and extend 10 feet back from the top of the bank. The plantings must be completed by the end of the first planting season following the disturbance.

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<sup>1</sup> See current version at [http://www.dfw.state.or.us/odfwhtml/infocntrfish/management/stream\\_road.htm](http://www.dfw.state.or.us/odfwhtml/infocntrfish/management/stream_road.htm)



- h. **Erosion Controls:** All practicable erosion control devices shall be installed and maintained in good working order throughout construction to prevent the unauthorized discharge of material into a wetland or tributary. The devices shall be installed to maximize their effectiveness, e.g., sediment fences shall generally be buried or similarly secured. These controls shall be maintained until permanent erosion controls are in place.

Practicable erosion control measures include, but are not limited to the following.

- 1 Fill is placed in a manner that avoids disturbance to the maximum practicable extent e.g., placing fill with a machine rather than end-dumping from a truck,
  - 2 Prevent all construction materials and debris from entering waterway;
  3. Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, Jersey barriers, sand bags, or other measures sufficient to prevent movement of soil;
  - 4 Use impervious materials to cover stockpiles when unattended or during rain event,
  - 5 Erosion control measures shall be inspected and maintained daily to ensure their continued effectiveness;
  - 6 No heavy machinery in a wetland or other waterway;
  7. Use a gravel staging area and construction access;
  8. Fence off planted areas to protect from disturbance and/or erosion; and
  - 9 Flag or fence off wetlands adjacent to the construction area.
- i. **Maps and Drawings.** In addition to the items required in Nationwide Permit General Condition No. 13, all preconstruction notifications shall contain maps showing the project location as well as plan-view and cross-sectional drawings showing the proposed work. The map(s) shall be of a scale and detail to clearly identify the projection location(s). Drawings shall be sufficient in number and detail to accurately portray the project.
- j. **Bank Protection:** Riprap shall be clean, durable, angular rock. The use of other materials such as broken concrete, asphalt, tires, wire, steel posts, or similar materials is not authorized. The project design shall minimize the placement of rock and maximize the use of vegetation and organic material such as rootwads to the extent practicable. Riparian plantings shall be included in all project designs unless the permittee can demonstrate they are not practicable. The permittee must notify the District Engineer in accordance with Nationwide Permit General Condition No. 13 for any activity that includes bank stabilization.
- k. **Inspection of the Project Site:** The permittee must allow representatives of the Corps to inspect the authorized activity to confirm compliance with nationwide terms and conditions. Personnel from the Oregon Department of Environmental Quality (DEQ) and Department of Land Conservation and Development (DLCD) are considered to be authorized "representatives" for the purpose of Section 401 Water Quality or Coastal Zone Management inspections. For projects on tribal land, the Environmental Protection Agency (EPA) is considered an authorized representative. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be onsite with the agency representative making the inspection.
- l. **Sale of Property/Transfer of Permit:** If you sell the property associated with this permit, you must transfer the permit to the new owner(s) and obtain their signature(s). A copy of this permit with the new owner(s) signature shall be sent to this office to validate the transfer of this permit authorization.

## **2002 Nationwide Permit and Replacement Regional General Permit (RGP) General Conditions**

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation
2. **Proper Maintenance** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **Soil Erosion and Sediment Controls** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
4. **Aquatic Life Movements** No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
5. **Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.
7. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U S. Forest Service, Bureau of Land Management, U S. Fish and Wildlife Service).
8. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. **Water Quality.**
  - (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)); (b) For NWP's 17, 32, 40, 42, 43, and 44 and RGP categories C, E, G, and K, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality

(or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters; including streams (refer to General Condition 19 for vegetated buffer requirements for the NWP and RGP Categories).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10 **Coastal Zone Management.** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).

11 **Endangered Species.**

(a) No activity is authorized under any NWP or RGP category which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs and RGP categories.

(b) Authorization of an activity by a NWP or RGP category does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide Web pages at <http://www.fws.gov/r9endspp/endspp.html> and [http://www.nmfs.noaa.gov/prot\\_res/overview/es.html](http://www.nmfs.noaa.gov/prot_res/overview/es.html), respectively

12 **Historic Properties.** No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity

until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

**13 Notification.**

(a) Timing; where required by the terms of the NWP or RGP category, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP or RGP category with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP or RGP category may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2)

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose, direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP or RGP category (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWP 7, 21, 34, 38, , 40, 41, 42, and 43 and RGP categories C, E, G, and K, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;

(6) For RGP category E (Linear Transportation Projects), the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For RGP category I (Stream and Wetland Restoration Activities), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;

(9) For RGP category J (Single-Family Housing), the PCN must also include

(i) Any past use of this RGP or NWP 29 by the Individual Permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP and RGP category, parcels of land measuring 1/4-acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 1/4-acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

**(10) For NWP 31 (Maintenance of Existing Flood Control Facilities), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:**

- (i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;**
- (ii) A delineation of any affected special aquatic sites, including wetlands; and,**
- (iii) Location of the dredged material disposal site;**

**(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;**

**(12) For NWPs 39, 43 and 44, and RGP category K, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;**

**(13) For RGP category K and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP or RGP category, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed,**

**(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;**

**(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;**

**(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities),**

**(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and**

**(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.**

**(c) Form of Notification: The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.**

**(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP or RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP or RGP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP or RGP.**

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP or RGP and instruct the applicant on the procedures to seek authorization under an Individual Permit, (2) that the project is authorized under the NWP or RGP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP or RGP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and RGP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than 1/2-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetland Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps (For RGP category J see paragraph (b)(9)(iii) for parcels less than 1/4-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.



- 14 **Compliance Certification.** Every permittee who has received NWP or RGP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:
- (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
  - (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
  - (c) The signature of the permittee certifying the completion of the work and mitigation.
- 15 **Use of Multiple Nationwide Permits.** The use of more than one NWP or RGP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs or RGP does not exceed the acreage limit of the NWP or RGP category with the highest specified acreage limit (e.g., if a road crossing over tidal waters is constructed under RGP category E, with associated bank stabilization authorized by RGP category D, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3-acre).
16. **Water Supply Intakes.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.
17. **Shellfish Beds.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.
18. **Suitable Material.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).
19. **Mitigation.** The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.
- (a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).
  - (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWP or RGP categories. For example, 1/4-acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with RGP category K verification. However, 1/2-acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs or RGP categories.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the U.S.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

- 20 **Spawning Areas** Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.
21. **Management of Water Flows.** To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow
- This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.
- 22 **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material
23. **Waterfowl Breeding Areas.** Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
- 24 **Removal of Temporary Fills.** Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.
25. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.
- (a) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWPs 7, 16, 17, 21, 31, 35, 40, 42, 43, and 44 and RGP categories C, E, J, and K for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the

US may be authorized by the above NWP or RGP categories in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWPs 8, 10, 15, 19, 22, 23, 28, 30, 33, 34, 36, 37, and 38 and RGP categories A, D, G, H, and I, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs or RGP categories only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. **Fills Within 100-Year Floodplains.** For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) **Discharges in Floodplain; Below Headwaters.** Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 40, 42, 43, and 44 and RGP category K.

(b) **Discharges in Floodway; Above Headwaters.** Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 40, 42, and 44 and RGP category K.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. **Construction Period.** For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP or RGP category (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.

## B. Definitions

**Best Management Practices (BMPs):** BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

**Compensatory Mitigation:** For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved

**Creation:** The establishment of a wetland or other aquatic resource where one did not formerly exist.

**Enhancement:** Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

**Ephemeral Stream:** An ephemeral stream has flowing water only during and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

**Farm Tract:** A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

**Flood Fringe:** That portion of the 100-year floodplain outside of the floodway (often referred to as "floodway fringe").

**Floodway:** The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain

**Independent Utility:** A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Intermittent Stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of Waters of the US:** Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that

change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an RGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Impacts to ephemeral streams are not included in the linear foot measurement of loss of stream bed for the purpose of determining compliance with the linear foot limits of RGP-K. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US.

**Non-tidal Wetland:** A non-tidal wetland is a wetland (i.e., a water of the US) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328 3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open Water:** An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term "open water" includes rivers, streams, lakes, and ponds. For the purposes of the RGPs, this term does not include ephemeral waters.

**Perennial Stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Permanent Above-grade Fill:** A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by RGP A, G, etc. are not included.

**Preservation:** The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

**Restoration:** Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

**Riffle and Pool Complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Single and Complete Project:** The term "single and complete project" is defined at 33 CFR 330 2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate

water of the US (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

**Stormwater Management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater Management Facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream Bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream Channelization:** The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow

**Tidal Wetland:** A tidal wetland is a wetland (i.e., water of the US) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

**Vegetated Buffer:** A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open-waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by RGPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

**Vegetated Shallows:** Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:** A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.



## **Section 401 Water Quality Certification (WQC)**

### **Part A – General Conditions**

1. **Duration of Certification-** This 401 WQC shall remain in effect until the Regional General Permit (RGP) expires or the Nationwide Permit (NWP) categories it covers are considered for re-issue and certification as part of NWP package.
2. This Section 401 WQC does not authorize any activity in tidal waters or wetlands adjacent to tidal waters
3. **Turbidity Control:** The following conditions relating to turbidity shall be observed
  - a. Except as allowed in Condition 3(b) or 3(c) [below], the authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by 10 percent, measured 100 feet downstream from the activity causing turbidity
  - b. For projects in streams where the gradient is less than or equal to two (2) percent (rise/run), monitoring shall take place at no less than four (4)-hour intervals during active in-water work. Where erosion control measures specified in General Condition 4 of this WQC have been implemented, the turbidity standard specified in General Condition 3(a) may be exceeded for a maximum of one (1) monitoring interval per 24-hour work period.
  - c. For projects in streams where the gradient is great than two (2) percent (rise/run), monitoring shall take place at no less than two (2)-hour intervals during active, in-water work. Where erosion control measures specified in General Condition 4 of this certification have been implemented, the turbidity standard specified in General Condition 3(a) may be exceeded for a maximum of two (2) hours
  - d. For projects impacting streams, water quality monitoring points shall be established at an undisturbed site representing background conditions at least 100 feet upstream from the point of permitted work, and at a point 100 feet downstream from the point of permitted activity in the visible plume, if one is present. Other monitoring locations may be authorized by the Corps if access is problematic. A turbidimeter is recommended for measuring, however, visual gauging is acceptable. If measured visibility, turbidity that is visible over background is considered an exceedance of the standard
  - e. The person(s) conducting the monitoring shall be responsible for immediately notifying the permit holder or the permit holder's onsite representative of any exceedance of the turbidity standard and shall keep a record of the exceedance. If a 10 percent exceedance of the background level occurs at 100 feet below the project site, turbidity control measures shall be improved or additional controls shall be implemented until the turbidity standards is met. Monitoring shall continue at prescribed compliance intervals. If exceedances caused by the permitted activity occur during two consecutive measurements, the activity causing the turbidity shall stop until appropriate abatement techniques bring the project back into compliance.
4. **Erosion Control:** The applicant is referred to DEQ's Oregon Sediment and Erosion Control Manual, April 2005. The following erosion control measures (and others as appropriate) or comparable measures as specified in NPDES 1200-C permit (if required) shall be implemented.

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- a Filter bags, sediment traps or catch basins, vegetative strips, berms, Jersey barriers, fiber blankets, bonded fiber matrices, geotextiles, mulches, wattles, sediment fences, or other measures used in combination shall be used to prevent movement of soil from uplands into waterways or wetlands;
- b An adequate supply of materials needed to control erosion must be maintained at the project construction site;
- c To prevent stockpile erosion, use compost berms, impervious materials or other equally effective methods, during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;
- d Erosion control measures shall be inspected and maintained daily or more frequently as necessary to ensure their continued effectiveness and shall remain in place until all exposed is stabilized.
  - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, mobilize work crews immediately to make repairs, install replacements, or install additional controls as necessary.
  - ii. Remove sediment from erosion and sediment controls once it has reach one-third of the exposed height of the control.
- e Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian or wetland areas shall use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by the Corps
- f Dredged or other excavated material shall be placed on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands;
- g Sediment from disturbed areas are able to be tracked by vehicles onto pavement shall not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the State and impair water quality. Placement of clean aggregate at all construction entrances, and other Best Management Practices (BMPs) such as truck or wheel washes if needed, will be used when earth moving equipment will be leaving the site and traveling on paved surfaces, and,
- h Existing stormwater inlets or catch basins located downslope of the work area must be protected with sediment control measures to prevent debris and turbid flows from reaching waters of the State.

**5 Deleterious Materials.** The following conditions relating to control of hazardous, toxic and waste materials shall be observed:

- a **Treated Wood:** Ineligibility-Projects which use chemically treated wood that will contact surface or ground water or that will be placed over water where it will be exposed to abrasion require individual, site specific review and are, therefore, not certified by this 401 WQC.
- b Projects that require removal of chemically treated wood must:
  - i. Ensure that no treated wood debris falls into waters of the State. If treated wood debris falls into waters of the State, it must be removed immediately.
  - ii. Dispose of all treated wood debris removed during a project, including treated wood pilings, at an upland facility approved for hazardous materials of this classification. Do not leave a treated wood piling in the water or stacked on the streambank.

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- c. Biologically harmful materials and construction debris including, but not limited to: petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete shall not be placed in waterways or wetlands. Authorized fill material must be free of these materials. The applicant must remove all foreign materials, refuse, and waste from the project area.
- d. An adequate supply of materials needed to contain deleterious materials during a weather event must be maintained at the project construction site
- e. Machinery refueling shall not occur in waterways or wetlands or their riparian areas. Refer to General Condition 6 for refueling specifics.

**6 Spill Prevention and Staging Activities:** Fuel, operate, maintain, and store vehicles and construction materials in areas that minimize disturbance to habitat and prevent adverse effects from potential fuel spills.

- a. Limit staging areas to the minimum size necessary to complete the project. To reduce the staging area and potential for contamination, ensure that only enough supplies and equipment to complete a specific task will be stored onsite
- b. Complete vehicle staging, cleaning, maintenance, refueling, and fuel storage in a vehicle staging area placed 150 feet or more from any waters of the State, unless this distance is not appropriate because of the following site conditions:
  - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings)
  - ii. Natural resource features would be degraded as a result of this setback.
  - iii. Equal or greater spill containment and effect avoidance if staging area is less than 150 feet of any waters of the State.
- c. If staging areas are within 150 feet of any waters of the State, full containment of potential contaminants shall be provided to prevent soil and water contamination, as appropriate.
- d. Inspect all vehicles operated within 150 feet of any waters of the State daily for fluid leaks before leaving the vehicle staging area. Repair any leaks detected in the vehicle staging area before the vehicle resumes operation. Document inspections in a record that is available for review on request by the appropriate Regulatory Authorities
- e. Before operations begin and as often as necessary during operation, steam clean (or an approved equal) all equipment that will be used below bankfull elevation until all visible external oil, grease, mud, and other visible contaminants are removed.
- f. Diaper all stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the State to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the State.
- g. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to control erosion and/or to contain deleterious materials during a weather event must be maintained at the project construction site.

**7. Spill Reporting:** Project-related spills that enter waters of the State or onto land with a potential to enter waters of the State shall be reported to the Oregon Emergency Response System (OERS) at 800-452-0311.

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8. **Construction Process Water:** Water from any construction site may not be discharged directly to an unpermitted stormwater system, or to any other conveyance system leading directly to a water of the State. Adverse effects to water quality from construction water with pollutants (e.g., concrete washout, hydromilling, pumping for work area isolation, vehicle wash water, drilling fluids) must be avoided:

- a. **Process Water Containment**-Design, build, and maintain facilities to collect and treat all construction discharge water, including any contaminated water produced by drilling, using the best available technology applicable to site conditions. Provide treatment to remove debris, nutrients, sediment, petroleum hydrocarbons, metals, and other pollutants likely to be present. An alternative to treatment is collection and proper disposal offsite;
- b. **Drilling Discharge**-All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, will be completely isolated, recovered, then recycled or disposed of to prevent entry into waters of the State.
- c. When drilling is completed, attempts will be made to remove the remaining drilling fluid from the sleeve (e.g., by pumping) to reduce turbidity when the sleeve is removed

9 **Fish Avoidance.** Minimize water quality impacts and adverse effects to fish species from in-water work activities.

- a. **Timing of In-Water Work**-All work below the OHW elevation, or bankfull elevation, including temporary fills or structures, shall occur within the time periods recommended by Oregon Department of Fish and Wildlife (ODFW) for in-water work specified in the most current version of *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*. Any exception to the Guidelines shall require specific approval from the Corps after consultation with ODFW, and where required, USFWS and/or National Marine Fisheries Service (NMFS, NOAA Fisheries).
- b. **Cessation of Work**-Cease project operations under high flow conditions that may result in inundation of the project area, except for efforts to avoid or minimize turbidity or other resource damage as a result of the exposed project area.
- c. **Fish Passage**-Provide passage for any adult or juvenile migratory fish species present in the project area during and after construction, for the life of the project, and as approved in writing by the appropriate resource and regulatory agencies including ODFW, USFWS, and NMFS. Upstream passage is not required during construction if it did not previously exist.
- d. **Isolation of In-Water Work Area**- If adult or juvenile fish are reasonably certain to be present, if spawning habitats are reasonably likely to be impaired (e.g. work area is within 300 feet or as required by ODFW), or as needed to protect beneficial uses, complete isolation of the work area from the active flowing stream using inflatable bags, geo blocks, sandbags, sheet piling, or similar materials, is required unless otherwise approved in writing by the appropriate Regulatory Authorities. The applicant is referred to DEQ's Oregon Sediment and Erosion Control Manual, April 2005, for isolation techniques

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10. **Site Restoration: *Riparian and Wetland Vegetation Protection and Restoration***-Vegetation associated with water of the State, including wetlands, is absolutely essential in preserving and enhancing water quality. In many cases this includes vegetation on adjacent upland buffer areas. Therefore riparian, wetland, and shoreline vegetation in the project area shall be protected from unauthorized disturbance, or, if authorized work results in unavoidable disturbance, shall be restored and enhanced. The applicant must protect or restore habitat access, production of habitat elements, channel conditions, flows, watershed conditions, and other ecosystem processes that form and maintain productive habitats

Preparation and implementation of a *Site Restoration Plan* may be required to ensure that all habitats and accesses (e.g., streambanks, soils, large woody material, and vegetation) disturbed by the project are restored.

- a. **Site Restoration Plan Requirements**-Consistent with OAR 141-085-0171, when impacts to existing vegetation are anticipated as a result of the proposed activities, and the impacts will not require mitigation because they are considered temporary, the applicant must provide a rehabilitation plan for temporary impacts which includes the following:
  - i. Existing and proposed contours.
  - ii. Existing physical and biological characteristics, including vegetation.
  - iii. Geomorphology and habitat features of stream or other open waters
  - iv. Areas of temporary impacts associated with construction staging and access.
  - v. Restoration goals and objectives necessary to restore lost functions.
  - vi. A planting plan appropriate to the geographic area which demonstrates how the applicant will replace or enhance riparian vegetation function.
  - vii. A plan to control exotic invasive vegetation;
  - viii. An irrigation plan, including water supply source, if necessary.
- b. **General Conditions Relating to Site Disturbance**
  - i. All exposed soils must be stabilized during and after construction to prevent erosions and sedimentation.
  - ii. All disturbed areas shall be returned to original ground contours at project completion.
  - iii. There shall be no operation of equipment such that machinery drives into the water. Work must be conducted from the top of the bank or in the dry.
  - iv. No removal of vegetation shall occur outside the construction corridor or project footprint.

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- v. At project completion soil exposed by construction activity must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the permitted work, they must be covered with erosion control mats, or an equally effective erosion control technique until vegetative stabilization is achieved.
  - vi. Woody vegetation removed or destroyed as a result of project construction shall be replaced at a rate of 2:1 with native trees and shrubs or as appropriate to the geographic area within the first planting season after project completion, consistent with OAR 141-085-0171.
  - viii. There shall be 80% survival of planted trees and shrubs, and 80% cover of planted or naturally recruited native herbaceous cover for 5 years following planting.
- c. **General Considerations:**
- i. **Streambank Shaping.** Restore damaged streambanks to a natural slope, pattern and profile suitable for establishment of permanent woody vegetation, unless precluded by pre-project conditions (e.g., a natural rock wall)
  - ii. **Revegetation.** Replant or reseed each area requiring revegetation before the end of the first planting season following construction. Use a diverse assemblage of species native to the project area or region, unless approved in writing by the appropriate Regulatory Authorities. Impacted streambank vegetation shall be replaced to the line of non-aquatic vegetation. Restored vegetation in adversely affected wetlands shall extend to the upland limits of the wetland area.
  - iii. **Pesticides** No pesticides, including herbicides, will be allowed within 150 feet of waters of the State or a greater distance as determined by current case law. Mechanical, hand, or other methods may be used to control weeds and unwanted vegetation.
  - iv. **Fertilizer.** Do not apply surface fertilizer within 50 feet of any stream channel, unless approved in writing by the appropriate Regulatory Authorities.
  - v. **Fencing.** Install wildlife-friendly fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons.
  - vi. **Source of Materials.** Obtain boulders, rock, woody materials and other natural construction materials used for the project outside the bankfull elevation and at least 150 feet from any waters of the State, except for native materials obtained from within the project footprint to be stockpiled and reused on site.
    - (1) If possible, leave native materials where they are found.
    - (2) If native materials (e.g., downed wood) are damaged or destroyed, replace them with a functional equivalent during site restoration.
    - (3) Stockpile all large wood, native vegetation, weed-free topsoil, and native channel material displaced by construction for use during site restoration in-channel, in the riparian area, or in adjacent uplands, as appropriate.

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- d. **Rehabilitation Plan Contents.** Use of the following design elements, while discretionary, may lead to more successful rehabilitation efforts

- 1 **Design Considerations** These guidelines may be used to develop a design plan and to aid in restoration goal assessment. While no single element is sufficient to measure success, the intent is that these features should be present within reasonable limits of natural and management variation:
- (1) Bare soil spaces that approximate the size and dispersal pattern of pre-existing conditions.
  - (2) Soil movement, such as active rills or gullies and soil disposition around plants or in small basins, is absent or slight and local;
  - (3) If areas with past erosion are present, they are completely stabilized and healed;
  - (4) Plant litter is well distributed and effective in protecting the soil with few or no litter dams present;
  - (5) Native woody and herbaceous vegetation, and germination microsites, are present and well distributed across the site,
  - (6) Vegetation structure is resulting in rooting throughout the pre-existing, available soil profile;
  - (7) Plants have normal, vigorous growth form, and a high probability of remaining vigorous, healthy and dominant over undesired competing vegetation;
  - (8) Streambanks have less than 5% exposed soils with margins anchored by deeply rooted vegetation or coarse-grained alluvial debris.

11. Projects employing sumps or dry wells for groundwater discharge must conform to OAR 340-044-050 Contact Barbara Priest, DEQ, at 503-229-5945 for more information.

12. DEQ reserves the option to modify, amend, or revoke this 401 WQC for any or all activities or categories of activities, in the event that:

- a. New information indicates that the certified activities are having a significant adverse impact on State water quality or aquatic resources;
- b. State water quality standards, criteria, or beneficial uses are amended through rulemaking; or
- c. A proposed activity is necessitated by natural or human caused events which result in sudden structural damage threatening human health and safety and determined by the Corps or DEQ to be an emergency.

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## **Section 401 Water Quality Certification**

### **Part B – Activity Specific Conditions**

1 **Streambank Stabilization and Protection**-Avoid and minimize adverse effects to natural stream and floodplain function by limiting streambank protection actions to those that are not expected to have long-term adverse effects on aquatic habitats. Whether these actions will also be adequate to meet other streambank protection objectives depends on the mechanisms of streambank failure operating at site-and reach-scale.

- a. **Ineligibility**-The following streambank stabilization activities are not certified by this 401 WQC:
  - i. Any streambank stabilization project equal to or greater than 250 continuous linear feet of bank disturbance;
  - ii. Any streambank stabilization project that involves the placement of more than one cubic yard of rock per linear foot below OHW;
  - iii. Permanent placement of material in wetlands adjacent to a stabilization project;
  - iv. Placement of toe rock in constructed stream channel trenches where bioengineering is not a feature of the project [unless specified below in c , ii. (1) through (5) below],
  - v. Placement of new vertical structures such as retaining walls, bulkheads, gabions or similar structures.
- b. **Choice of Techniques**-The following bank protection techniques are approved for use individual or in combination:
  - i. Woody plantings and variations (e.g., live stakes, brush layering, fascines, brush mattresses)
  - ii. Herbaceous cover, where analysis of available records (e.g , historical accounts and photographs) shows that trees or shrubs did not exist on the site within historic times, primarily for use on small streams and adjacent wetlands;
  - iii. Deformable soil reinforcement consisting of soil layers or lifts strengthened with fabric and vegetation that are mobile ('deformable') at approximately two- to five-year recurrence flows;
  - iv. Coir logs (long bundles of coconut fiber), straw bales, and straw logs used individually or in stacks to trap sediment and provide growth medium for riparian plants;
  - v. Bank reshaping and slope grading, when used to reduce a bank slope angle without changing the location of its toe, increase roughness and cross-section, and provide more favorable planting surfaces.
  - vi. Floodplain roughness (e.g., floodplain tree and large woody debris row, level siltation fences, brush traverses, brush rows, and live brush sills) used to reduce the likelihood of avulsion in areas where natural floodplain roughness is poorly developed or has been removed.
  - vii. Floodplain flow spreaders, consisting of one or more rows of trees and accumulated debris is used to spread flow across the floodplain.
  - viii. Flow-redirection structures known as barbs, vanes, or bendway weirs, when designed as follows, and as otherwise approved in writing by the appropriate Regulatory Authorities.
    - (1) No part of the flow-redirection structure may exceed bank full elevation, including all rock buried in the bank key.

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- (2) Build the flow-redirection structure primarily of wood or otherwise incorporate large wood at a suitable elevation in an exposed portion of the structure or the bank key. Placing the large woody debris near streambanks in the depositional area between flow direction structures to satisfy this requirement is not approved, unless those areas are likely to be greater than three feet in depth, sufficient for target-species rearing habitats.
  - (3) Fill the trench excavated for the bank key above bankfull elevation with soil and topped with native vegetation.
  - (4) The maximum flow-redirection structure length will not exceed one-fourth of the bankfull channel width.
  - (5) Place rock individually without end dumping, unless approved in writing by the appropriate Regulatory Authorities.
  - (6) If two or more flow-redirection structures are built in a series, place the flow-redirection structure farthest upstream with 150 feet or 2.5 bankfull channel widths, from the flow-redirection structure farthest downstream
  - (7) Include wood riparian planting as a project component.
- c. **Use of Large Wood and Rock**-Whenever possible, use large wood as an integral component of streambank protection treatments. Avoid or minimize the use of rock, stone, and similar materials
- i. Large wood will be intact, hard, and undecayed to partly decaying with untrimmed rootwads to provide functional refugia habitat for fish. Use of decayed or fragmented wood found lying on the ground or partially sunken in the ground is not acceptable.
  - ii. Rock may be used instead of wood for the following purposes and structures. The rock may not impair natural stream flows into or out of secondary channels or riparian wetlands. Whenever feasible, place topsoil over the rock and plant with woody vegetation.
    - (1) As ballast to anchor or stabilize large woody debris components of an approved bank treatment.
    - (2) To fill scour holes, as necessary to protect the integrity of the project, if the rock is limited to the depth of the scour hole and does not extend above the channel bed.
    - (3) To construct a footing, facing, head wall, or other protection necessary to prevent scouring or downcutting of, or slope erosion or failure at, an existing structure (e.g., culvert, utility line, roadway or bridge support) to be repaired.
    - (4) To construct a flow-redirection structure as described above.
    - (5) In projects maintaining existing transportation related structures when an ODOT or other registered professional engineer identifies rock alone as the only effective method due to site specific geotechnical or hydraulic concerns.

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## 2. Stormwater Management for RGP Activities Involving Impervious Surfaces

*Stormwater discharges to waters of the State must not violate State water quality standards, including Oregon Administrative Rule (OAR) 340-041-0004, the Antidegradation Policy on Surface Water*

**Post-Construction Stormwater Management Plans:** Levels of post-construction stormwater management planning for the RGP 401 WQC are determined by project scope, location, and reasonable expectation that increased pollutant loads will enter waters of the State. Making a determination as to level of detail required in a stormwater plan is described by the following tiered system

- a. **Description of Tiers**-to determine appropriate level of post-construction stormwater management planning necessary, use one of the following.
  - i. **Tier 1 Project**-A project located within a community permitted under a National Pollutant Discharge Elimination Strategy (NPDES) Phase I or II Municipal Separate Storm Sewer System (MS4) and discharging to the municipal system. If the applicant does not plan to discharge into the permitted municipal system, they must use Tier 2 or Tier 3;
  - ii. **Tier 2 Project**-Outside MS4 areas, and the total site disturbance less than one acre, and no increase in pollutant loads or increased runoff to waters of the State;
    - A New and associated impervious area less than or equal to 500 square feet; maintenance of existing structures which qualify for RGP A (Maintenance); or projects which qualify for RGP J (Single Family Housing); or,
    - B Site development activities with new and associated impervious area greater than 500 square feet.If the applicant is uncertain of effects or is unable to demonstrate that increased stormwater resulting from the project will have minimal effect on pollutant loads in waters of the State, they should use Tier 3.
- III. **Tier 3 Project**-Outside MS4 areas, and total site disturbance one acre or greater;
  - A New and associated impervious area less than or equal to 500 square feet; or
  - B New and associated impervious area greater than 500 square feet
- b. **Documentation Required**-The above described Projects, Tiers 1, 2, and 3, require the following documentation to demonstrate that post construction stormwater will be managed to attain compliance with State water quality standards. Failure to provide the documentation described below removes the project from eligibility for certification under this 401 WQC.
  - i. **Tier 1 Projects**-Require documentation from the MS4 Phase I/II municipality that post construction stormwater discharged from the project site will be accepted into the municipal system or Statement from the applicant that a request has been submitted to the municipality to accept project stormwater Projects may receive a conditional permit from the Corps, which will become final only with proof of approval or stormwater acceptance by the Phase I/II municipality.

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- ii. ***Tier 2A and Tier 3A Projects***-The applicant must submit a post-construction Stormwater Management Plan the applicant is referred to the DEQ Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications Which Involve Impervious Surfaces). It is anticipated that stormwater plans for Tier 2A and Tier 3A projects will entail a short narrative paragraph and a rudimentary drawing which include the following elements or justification for those elements which may not be applicable:
- (1) A site sketch or plan view drawing indicating the drainage flow directions and discharge locations, contours or spot elevations (preferably both) showing direction of stream and surface flow and location and size of proposed facilities (e.g , parking lots, driveways, buildings, or roads) and nearest downstream waterbody, other physical features of the site, and the location and type of construction and post-construction BMPs;
  - (2) **BMPs-**
    - a. A description of proposed BMPs and a summary of their anticipated operation to ensure adequate capacity, proper function, and appropriate design for the site such that quality, quantity, and seasonality of pre-construction hydrologic conditions are mimicked to the maximum extent practicable, based on stormwater anticipated to be generated due to project-related impervious surfaces and delivered to waters of the State See local jurisdiction regulations and accepted stormwater manuals for detention and capacity requirements;
    - b. A BMP implementation schedule, operation, and maintenance plan, and designation of a party or agency with documentation of their agreement for responsibility for post-construction BMP maintenance; and
    - c. A plan for removal, recycling, and disposal of temporary BMPs which are not intended for post-construction use; or in lieu of (2) a, b, and c,
    - d. Reference to implementation of a programmatic process developed to achieve these expectations, and acknowledged by DEQ as adequately addressing pollution control or reduction through basin-wide post-construction stormwater management practices.
  - (3) If engineered structural BMPs are incorporated into the post construction stormwater management plan they must be prepared and stamped by an Oregon registered Professional Engineer (PE)
  - (4) The applicant must submit a copy of the Stormwater Management Plan to both the Corps and DEQ.

- iii. ***Tier 2B and Tier 3B Projects***-It is anticipated that stormwater plan narrative and drawings for Tier 2B and Tier 3B projects will be more detailed and specific than stormwater plans for Tier 2A and Tier 3A projects. An initial, conceptual plan which describes intended stormwater management but lacks engineering or specifics, is acceptable for a complete application. Projects may receive a conditional permit from the Corps which will become final only with submittal and approval of the final plan which must include the following elements:
- (1) The applicant must submit a post-construction *Stormwater Management Plan* which includes all requirements Stated in *Tier 2A and Tier 3A Projects* (1) through (4) above; additionally,
  - (2) *The Stormwater Management Plan* must contain calculations for the amount of stormwater generated from new impervious surfaces resulting from site construction using one of the DEQ-accepted Stormwater Manuals (*see Reference Section, attached*),
  - (3) The applicant must obtain an NPDES 1200-C or 1200-CA permit from DEQ or its designated agent, if soil disturbance occurs over one acre or more during construction activities (including but not limited to clearing, grading, stockpiling, filling, earthwork, excavation, development, building, demolition, and other ground disturbing or denuding activities) See new application guidance for NPDES General Storm Water Discharge Permits, 1200-CA for municipalities and 1200-C for others at <http://www.deq.State.or.us/wq/wqpermit/StormWaterFeesTable.htm>
  - (4) The NPDES 1200-C or 1200-CA permit must be retained onsite during construction, and the applicant must follow all requirements in the permit.

### **Reference Links**

DEQ Guidance for Preparation of the NPDES Storm Water Pollution Control Plan 2004:  
[http://www.deq.State.or.us/nwr/SWPCP\\_Guidance\\_2004.pdf](http://www.deq.State.or.us/nwr/SWPCP_Guidance_2004.pdf)

DEQ Best Management Practices for Stormwater Discharges Associated with Industrial Activities 2001: <http://www.deq.State.or.us/nwr/Industrial%20BMPs.pdf>

DEQ Guidance Document for Preparation of the NPDES Storm Water Pollution Control Plan 1997:  
<http://www.deq.State.or.us/wq/wqpermit/SWGuidance.pdf>

DEQ Recommended Best Management Practices for Storm Water Discharge 1997:  
<http://www.deq.State.or.us/wq/wqpermit/StormWaterBMPs.pdf>

DEQ Stormwater Management Guidelines – Underground Injection Control (UIC) Program 1998:  
<http://www.deq.State.or.us/wq/groundwa/swmgmtguide.htm>

DEQ Erosion and Sediment Control Manual 2005 (during construction):  
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<http://www.deq.State.or.us/wq/stormwater/swpescmanual.htm>

DEQ Boilers: Guidance on Bios Wales, Filter Strips, and Constructed Wetlands 2003:  
<http://www.deq.State.or.us/nwr/Biofilters.pdf>

\*Eastern Washington Manual Chapter 5: <http://www.ecy.wa.gov/pubs/0410076.pdf>

\*City of Portland Manual Chapter 2: <http://www.portlandonline.com/bes/index.cfm?c=35122>

\*Western Washington Manual Volume 5: <http://www.ecy.wa.gov/pubs/9915.pdf>

\*King Country Surface Water Design Manual: <http://dnr.metrokc.gov/wlr/dss/manual.htm>

Low Impact Development: Technical Guidance Manual for Puget Sound 2005:  
[http://www.psat.wa.gov/Publications/LID\\_tech\\_manual05/lid\\_index.htm](http://www.psat.wa.gov/Publications/LID_tech_manual05/lid_index.htm)

Guidelines and Resources for Implementing Soil Depth & Quality BMP T.5.13 WDOE Western Washington Stormwater Manual 2002: [http://www.compostwashington.org/PDF/SOIL\\_MANUAL.pdf](http://www.compostwashington.org/PDF/SOIL_MANUAL.pdf)

EPA Fact Sheets: <http://www.epa.gov/owm/mtb/mtbfact.htm>

EPA Urban Stormwater Best Management Practices Study Report:  
[http://www.epa.gov/waterscience/stormwater/usw\\_c.pdf](http://www.epa.gov/waterscience/stormwater/usw_c.pdf)

EPA Urban Stormwater Best Management Practices Study Report  
[http://www.epa.gov/waterscience/stormwater/usw\\_c.pdf](http://www.epa.gov/waterscience/stormwater/usw_c.pdf)

Stormwater Manager's Resource Center Manual – Design Examples:  
<http://www.stormwatercenter.net/>

\* DEQ accepted post-construction stormwater management manuals.

3. **Stormwater Conditions During Authorized Activities:** *The following conditions apply to all applicable projects authorized by the RGP:*

- a. The applicant must provide and implement a post-construction stormwater management plan consistent with the tiering strategy contained in Activity Specific Condition #2; and,
- b. All impacts to wetlands must be mitigated, including those impacts resulting from implementation a BMP, consistent with OAR 141-085-0176.

4. **Stream and Wetland Restoration-**

- a. **Ineligibility-**Any project employing artificial grade controls or water regulation devices such as concrete structures, dams, stop logs, full spanning weirs, or similar devices intended to alter natural hydrology is not certified by this 401 WQC.
- b. Heavy equipment working in wetlands must be placed on mats, or other measures shall be taken to minimize disturbances to fragile wetland soils and habitat.

*Section 401 Water Quality Certification for the RGP covering Nationwide categories suspended by implementation of SPGP*

- c Every effort must be made to conduct channel construction, restoration, and stabilization activities in the "dry," e.g. berms which isolate the area from flow-through must be left in place on both the upstream and downstream ends during earth moving and construction activities. All disturbed areas of the bed and banks of channel restoration products should be stabilized with biodegradable geotextile material before re-watering the project. When the stream is delivered to the newly constructed section, the breaching sequence is downstream breach first, and then upstream to help minimize erosion of disturbed soils.

**5. Utility Lines-**

- a. This WQC does not authorize the construction of substations or permanent access roads for utility lines in waters of the State including wetlands.
- b. All stream crossings must be made perpendicular to the bankline, or nearly so, and at the narrowest, or least sensitive, portion of the wetland or riparian corridor.
- c. Directionally bored stream crossings:
  - i. Drilling Discharge-All drilling equipment, drill recover, and recycling pits, and any waste or spoil produced, will be completely isolated, recovered, then recycled or disposed of to prevent entry into waters of the State. Recycling using a tank instead of drill recovery/recycling pits is preferable:
  - ii. In the event that drilling fluids unavoidably enter a water of the State, the equipment operator must stop work, immediately initiate containment measures and report the spill to Oregon Emergency Response System at 800.452.0311. Prior to cleanup, plans must be submitted and approved by the regulatory agencies;
  - iii. When drilling is completed, attempts will be made to remove the remaining drilling fluid from the sleeve (e.g. by pumping) to reduce turbidity when the sleeve is removed; and
  - iv. An adequate supply of materials needed to control erosion and/or to contain drilling fluids must be maintained at the project construction site.
- d. Utility lines through wetlands must first be fitted with trench plugs to avoid dewatering wetlands.
- e. See Part A-General Condition 10 regarding site restoration.

**6. Piling Placement and Removal:** Avoid adverse effects to aquatic habitats during placement or removal of temporary or permanent piling.

- a. Immediately place removed piling onto an appropriate dry storage site.
- b. Attempt to remove the entire temporary or permanent piling.
- c. If chemically treated wood piles are to be removed using a vibratory hammer, ensure that holes are capped as the pile is removed in order to contain any undecomposed chemicals which have pooled beneath the substrate and may tend to escape upon extraction of the pile due to being less dense than the surrounding water.
- d. Ensure any treated wood piling to remain submerged is broken, cut, or pushed at least three feet below the sediment surface.
- e. Fill and cover holes left by each treated timber piling removed with clean, native substrates that match surrounding streambed materials.

**7. Site Preparation-** In addition to Stormwater Management, Part b, the following conditions also apply:

*Section 401 Water Quality Certification for the RGP covering Nationwide categories suspended by implementation of SPGP*

- a. Project applications must be complete and account for total impacts at build-out regardless of construction phasing. Projects may not be phased to avoid exceeding threshold limitations of 0.5 acres of wetland impact or 1,000 cubic yards of material removal or fill,
- b. Projects are ineligible for authorization under the RGP if individual lot impacts within full developments are not accounted for; and
- c. Impacts to wetlands and waters of the State for a project are additive relative to the thresholds for eligibility.

**8. Water Control Structures-See General Conditions**

If the applicant is dissatisfied with the conditions contained in this certification, you may request a hearing before the Environmental Quality Commission. Such request must be made in writing to the Director DEQ within 20 days of the mailing of this certification.

*Section 401 Water Quality Certification for the RGP covering Nationwide categories suspended by implementation of SPGP*

**Oregon Department of Land Conservation and Development (DLCD)  
Conditions for Compliance with the Coastal Zone Management Act**

1. **AQUACULTURE:** For projects involving commercial aquaculture cultivation, authorization for projects in Oregon's coastal zone under this Regional General Permit (RGP) is valid only if the applicant has obtained authorization when required from the Oregon Department of Agriculture for use of state submerged and submersible lands for aquaculture purposes.
2. **BANK STABILIZATION:**
  - a. Land use management practices and other non-structural methods of bank stabilization shall be preferred. The project design shall avoid or minimize the placement of rock or other hard materials and maximize the use of vegetation and organic materials such as rootwads and willow cuttings.
  - b. Projects shall be designed to meet the following conditions:
    - (1) No material is placed in excess of the minimum needed for erosion protection of the existing bankline. Placement of fill including riprap or other bank stabilization materials to reclaim lands to pre-flooding, erosion contours, or the pre-existing ordinary high water mark is not authorized.
    - (2) The bank stabilization activity occurs along no more than 250 feet of streambank. Bank stabilization projects utilizing only rootwads, willow cuttings, or other vegetative materials with no riprap materials are not subject to this length threshold.
    - (3) No material is placed in any special aquatic site, including wetlands.
    - (4) Materials and placement will be designed to the extent possible to withstand expected normal and high stream flows and shall not result in changes to stream gradients.
    - (5) The project does not include retaining walls, bulkheads, gabions, or similar vertical structures.
    - (6) Bank stabilization materials shall not include materials such as broken concrete, asphalt, tires, wire, steel posts, or similar materials. Any riprap material shall be clean, durable, angular rock that is predominately course or heavy-duty material.
    - (7) Riparian plantings shall be included in the project design unless the permittee can demonstrate that they are not practicable.
3. **FISH PASSAGE:** The permittee shall ensure that activities authorized by nationwide permit will not restrict the passage of aquatic life. Activities requiring the placement of culverts, diversion structures, or changes to channel morphology must be designed to be consistent with fish passage standards developed by the Oregon Department of Fish & Wildlife (ODFW) and National Marine Fisheries Service (NMFS) entitled Oregon Department of Fish & Wildlife Guidelines and Criteria For Stream- Road Crossings<sup>1</sup>.
4. **FISH SCREENING:** Where applicable, fish screening will meet the current standards developed by the ODFW and NMFS.

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<sup>1</sup> See ODFW website at  
[http://www.dfw.state.or.us/ODFWhtml/InfoCntrFish/Management/stream\\_road.htm](http://www.dfw.state.or.us/ODFWhtml/InfoCntrFish/Management/stream_road.htm).



- 5 **FLOODWAYS:** No fill or development shall occur within a designated floodway.
- 6 **HEAVY EQUIPMENT USE** Heavy equipment shall be operated from the bank and not placed in the stream unless specifically authorized. In-stream work may be authorized by the U S. Army Corps of Engineers (Corps) if necessary in the interest of safety or due to site conditions that prohibit work from the bank Heavy equipment in wetlands must be placed on mats or other measures must be taken to minimize damage to wetland resources.
- 7 **IN-WATER WORK PERIODS:** All in-water work including temporary fills or structures shall occur within the ODFW's recommended period for in-water work (as specified in the most current version of *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*<sup>2</sup> [Guidelines]). Exceptions to the recommended time periods require specific approval from the Corps. The Corps will generally coordinate exceptions to the Guidelines with the ODFW and/or NMFS. On tribal lands, the Corps will coordinate exceptions with the Environmental Protection Agency (EPA).
- 8 **INSPECTION OF PROJECT SITES:** The permittee shall allow a representative of the Oregon Coastal Management Program to inspect the authorized activity and site to confirm compliance with coastal zone management conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be onsite with the agency representative making the inspection
9. **LIMITED COASTAL WETLANDS:** Permanent loss i.e., from placement of fill, water diversion, mechanized land clearing, or other methods, of salt marsh or other estuarine wetlands, bogs or fens, mature forested wetlands, or Goal 5<sup>3</sup> or 17<sup>4</sup> protected wetlands is not authorized. Contact the applicable local government planning department to determine if protected Goal 5 or 17 wetlands are present in the project area. For other listed wetland types, see Oregon Department of State Lands-Hydrogeomorphic (HGM) Assessment Guidebook for Tidal Wetlands of the Oregon Coast<sup>5</sup>."
- 10 **LOCAL COMPREHENSIVE PLANS:** Authorization for projects in Oregon's coastal zone under any nationwide permit is valid only if the proposed project is consistent with or not subject to the applicable local comprehensive plan and implementing land use regulations. Permits or other authorizations must be obtained when required from the applicable local government before work is initiated under any nationwide permit.

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<sup>2</sup> See ODFW website at [http://www.dfw.state.or.us/lands/inwater/inwater\\_guide.pdf](http://www.dfw.state.or.us/lands/inwater/inwater_guide.pdf)

<sup>3</sup> Goal 5: National Resources, Scenic and Historic Areas, and Open Spaces. (Oregon Statewide Planning Goals & Guidelines) see <http://www.lcd.state.or.us/LCD/docs/goals/goal5.pdf>

<sup>4</sup> Goal 17: Coastal Shorelands. (Oregon Statewide Goals & Guidelines) see <http://www.lcd.state.or.us/LCD/docs/goals/goal17.pdf>

<sup>5</sup> See [http://www.oregon.gov/DSL/WETLAND/tidal\\_HGM\\_guidebook.shtml](http://www.oregon.gov/DSL/WETLAND/tidal_HGM_guidebook.shtml)

- 11 **RESTORATION/MITIGATION SITES.** The permittee shall ensure that activities authorized by nationwide permit will not negatively impact and/or revert wetlands or waterways to upland, via fill, removal, drainage, or other methods in either previous habitat restoration or compensatory mitigation sites.
- 12 **RIPARIAN VEGETATION PROTECTION AND RESTORATION** Riparian vegetation in the project area shall be protected from disturbance to the maximum extent practicable during work. Any disturbed areas shall be restored with native vegetation and temporarily fenced or otherwise protected from damage until the vegetation is established.
13. **STATE LANDS/REMOVAL-FILL LAW:** Authorization for projects in Oregon's coastal zone under any nationwide permit is valid only if the proposed project is consistent with or not subject to the state statutes for state lands and removal-fill in waters of the state. Permits or other authorizations must be obtained when required from the Oregon Department of State Lands (DSL) before work is initiated under any nationwide permit.
- 14 **STREAMBED PROTECTION.** Permanent loss of wetted streambed in fish-bearing waters is not authorized. Other impacts to streambeds should be avoided or minimized to ensure the project will not result in more than minimal environmental impact to coastal zone resources.
- 15 **STREAM CHANNELIZATION OR RELOCATION:** Neither stream channelization nor stream relocation is authorized.
- 16 **UPLAND DISPOSAL** All excess materials will be taken to a suitable upland location for disposal. The material shall be placed in a location and manner that prevents their discharge into waterways or wetlands (Exception for discharges authorized under Nationwide Permit No. 16 (Return Waters from Upland Contained Disposal Areas)).

**Water Quality:** DLCD considers compliance with Department of Environmental Quality (DEQ)-imposed water quality conditions to be necessary to ensure compliance with the water quality components of the Oregon Coastal Management Program.

## **PROJECT COMPLETION REPORT**

The Biological Opinion the Corps used to evaluate your proposal for compliance with the Endangered Species Act and the Magnuson-Stevens Act is a programmatic procedure developed with National Marine Fisheries Service. As required by the Biological Opinion, the following report must be completed and returned to the Corps no later than 60 days upon finishing work below ordinary high water.

**Mail to:**

U.S. Army Corps of Engineers, Portland District  
Eugene Field Office/County  
1600 Executive Parkway, Suite 210  
Eugene, Oregon 97401-2156

1. **Permittee Name:**     **Oregon International Port of Coos Bay**
2. **Corps Contact:**     **Mr. Benny Dean Jr.**
3. **Project No:**            **NWP-1996-1445/5 (South and Joe Ney Sloughs – remove and replace damaged and loose pilings.)**
4. **Type of Activity:**    **RGP Category E (Linear Transportation Projects)**
5. **Project/Mitigation Site by 5<sup>th</sup> Field HUC:** **1710030404**

**Please complete the following and return form to the address above:**

6. **Start and End Dates for Work Completed:**

7. **Photos** of the project site before, during, and after project completion:

8. **Projects with the following work elements must include these data.** (Further explanations of the following elements may be obtained by accessing the SLOPES document on-line at [http://seahorse.nmfs.noaa.gov/pls/pcts-pub/sxn7.pcts\\_upload.download?p\\_file=F15462/200401043\\_slopes\\_3\\_11-30-2004.pdf](http://seahorse.nmfs.noaa.gov/pls/pcts-pub/sxn7.pcts_upload.download?p_file=F15462/200401043_slopes_3_11-30-2004.pdf). (Refer to pages 107 and 108 of the document, item "g").

a. **Work Cessation** (Dates work ceased due to high flows):

b. **Fish Screen** (Proof of compliance with NMFS fish screen criteria):

- c. Pollution Control (A summary of pollution and erosion control inspections, including any erosion control failure, contaminant release, and correction effort).
- d. Drilling (Describe the drilling method and steps taken to isolate drilling operations, fluids, slurry, and spoils from flowing water)
- e. Pilings (The number, type, and diameter of pilings removed, broken during removal, and installed, and any sound attenuation measures used):
- f. Site Preparation (Riparian area cleared within 150 feet of ordinary high water, upland area cleared, new impervious area created):
- g. Streambank Stabilization (Type and amount of materials used, project size, including one bank or two, width, and linear feet):
- h. Road Construction, Repairs, and Improvements (Rationale for any new permanent road crossing design):
- i. In-Water and Over-Water Structures (Area of new in-water or over-water structure):

**I hereby certify that the work authorized the above referenced permit has been completed in accordance with the terms and conditions of said permit and that required mitigation is completed in accordance with the permit conditions, except as described below.**

---

**Signature of Permittee**

**Date**

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commander  
Thirteenth Coast Guard District

915 Second Avenue  
Seattle, WA 98174-1067  
Staff Symbol oan  
Phone (206) 220-7270  
Fax (206) 220-7285  
Email

16591  
March 14, 2003

Mr. Alan Rumbaugh  
Oregon International  
Port of Coos Bay  
P.O. Box 1215  
Coos Bay, OR 97420-0311

Dear Mr. Rumbaugh:

Bridge Permit Amendment 46a-76-13, dated March 14, 2003, is enclosed to authorize the work on the fender system of your bridge across Coos Bay at North Bend. When work in the channel commences you should notify us in writing and also when work is complete

If you have any questions about the eight conditions of the permit, please contact me at (206) 220-7282

Sincerely,

A handwritten signature in cursive script that reads "Austin Pratt".

Austin Pratt  
Chief, Bridge Section  
By direction

Enclosure: Bridge permit amendment 46a-76-13





MAR 14 2003

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## BRIDGE PERMIT

AMENDMENT  
(46a-76-13)

WHEREAS by a permit issued on 6 January 1913, as amended 10 January 1939, the Secretary of the Army approved the location and plans of a bridge to be constructed by the Willamette Pacific Railroad Company across Coos Bay near North Bend, Oregon, under authority of an act of Congress approved 3 March 1899, and that the bridge was constructed;

AND WHEREAS Section 9 of that act, as amended, transferred to and vested in the Secretary of Homeland Security the functions, powers and duties of the Secretary of the Army pertaining to the approval of plans for bridges over the navigable waters of the United States, and the Secretary of Homeland Security has delegated these functions, powers and duties to the Commandant, U. S. Coast Guard on 28 February 2003;

AND WHEREAS by the permit, as last amended 24 June 1976, the Commandant granted to Southern Pacific Railroad approval of revised plans indicating modification to the previously approved plans;

AND WHEREAS the Commandant of the Coast Guard has further delegated to the District Commanders, by Section 1.01-60(b) of Title 33, Code of Federal Regulations, authority to issue permits for the construction, reconstruction, or alteration of bridges across navigable waters of the United States;

AND WHEREAS condition 1 of the permit, as last amended, provides that no deviation from the approved plans may be made either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Commandant and the - OREGON INTERNATIONAL PORT OF COOS BAY- present owner of said bridge, has submitted for approval revised plans indicating further modification to the previously approved bridge;

NOW THEREFORE, This is to certify that location and plans dated August 2002 are hereby approved and supersede the plans previously approved. In granting this approval, all conditions to which the original permit, as last amended, were subject are superseded by the following conditions:

1. No deviation from the approved plans may be made either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the District Commander.

2. The construction of falsework, cofferdams or other obstructions, if required, shall be in accordance with plans submitted to and approved by the District Commander, prior to modification of the bridge. All work shall be so conducted that the free navigation of the waterway is not unreasonably interfered with and the present navigable depths are not impaired. Timely notice of any and all events that may affect navigation shall be given to the District Commander during modification of the bridge. The channel or channels through the structure shall be promptly cleared of all obstructions placed therein or caused by the modification of the bridge to the satisfaction of the District Commander, when in the judgment of the District Commander the modification work has reached a point where such action should be taken.

3. Issuance of this permit does not relieve the permittee of the obligation or responsibility for the compliance with the provisions of any other law or regulation as may be under the jurisdiction of the U.S. Army Corps of Engineers, Portland District; U.S. Department of the Interior, Fish and Wildlife Service; U.S. Department of Commerce, National Oceanographic and Atmospheric Administration Fisheries; Oregon Department of Environmental Quality, or any other federal, state or local authority having cognizance of any aspect of the location, modification or maintenance of said bridge.

4. The pier protection fender system shall be constructed and maintained as shown on plan sheets 3-7 and 9 (of 9) dated August 2002.

5. Clearance gauges shall be installed and maintained in good and legible condition by and at the expense of the owner of the bridge when so required by the District Commander. The type of gauges and the locations in which they are to be installed will be submitted to the District Commander for approval.

6. All parts of the existing to-be-modified Coos Bay Railroad Bridge across Coos Bay, mile 9.0, not utilized in the new modified bridge shall be removed down to or below the natural bottom of the waterway and the waterway cleared to the satisfaction of the District Commander. Such removal and clearance shall be completed at such time as the District Commander deems appropriate.

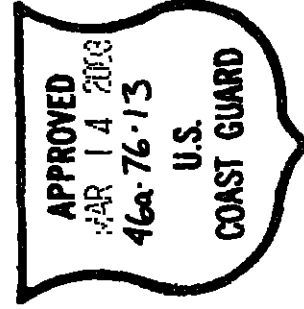
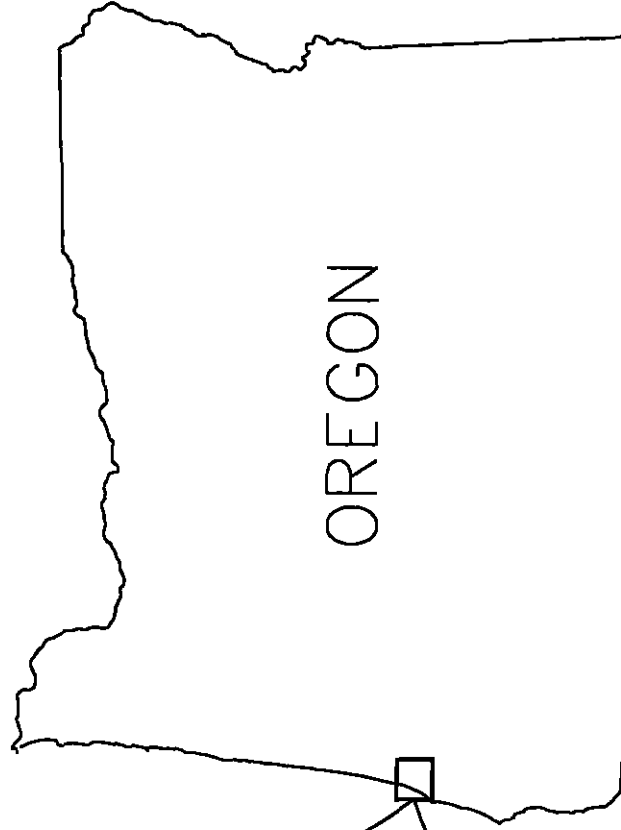
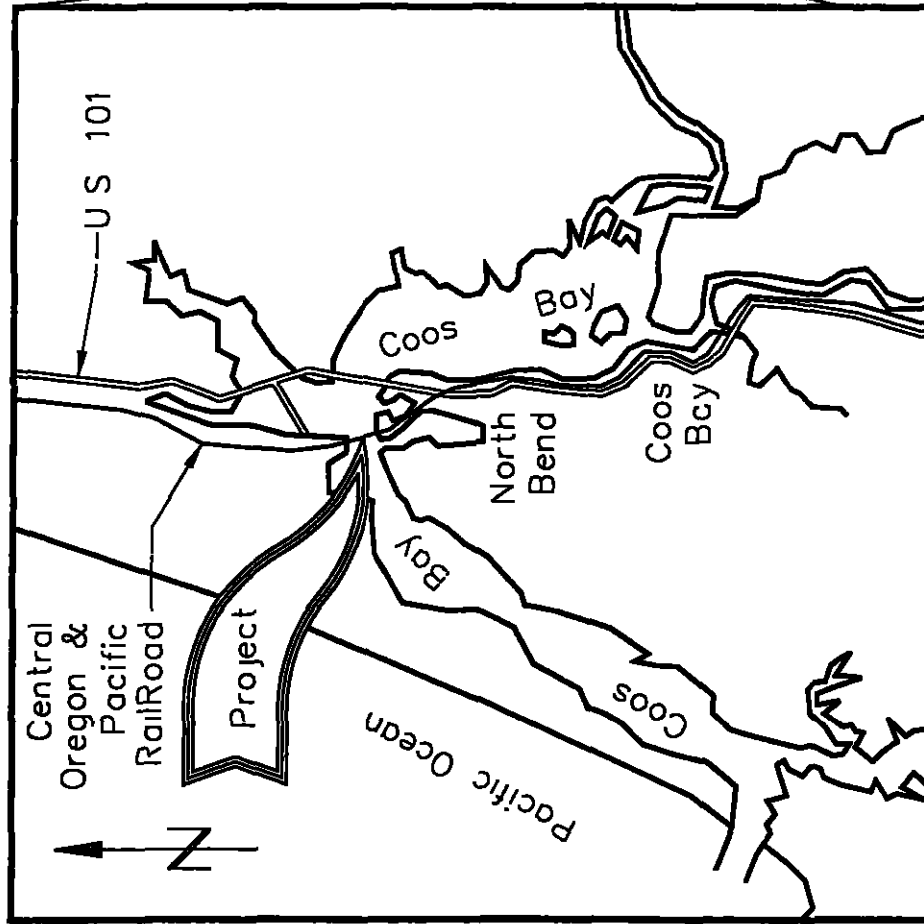
7. When the existing to-be-modified bridge is no longer used for transportation purposes, it shall be removed in its entirety or to an elevation deemed appropriate by the District Commander and the waterway cleared to the satisfaction of the District Commander. Such removal and clearance shall be completed by and at the expense of the owner of the bridge upon due notice from the District Commander.

8. The approval hereby granted shall cease and be null and void unless modification of the bridge is commenced within three years and completed within five years of the date of this bridge permit amendment.



ERROLL BROWN  
Rear Admiral, U. S. Coast Guard  
Commander, Thirteenth Coast Guard  
District





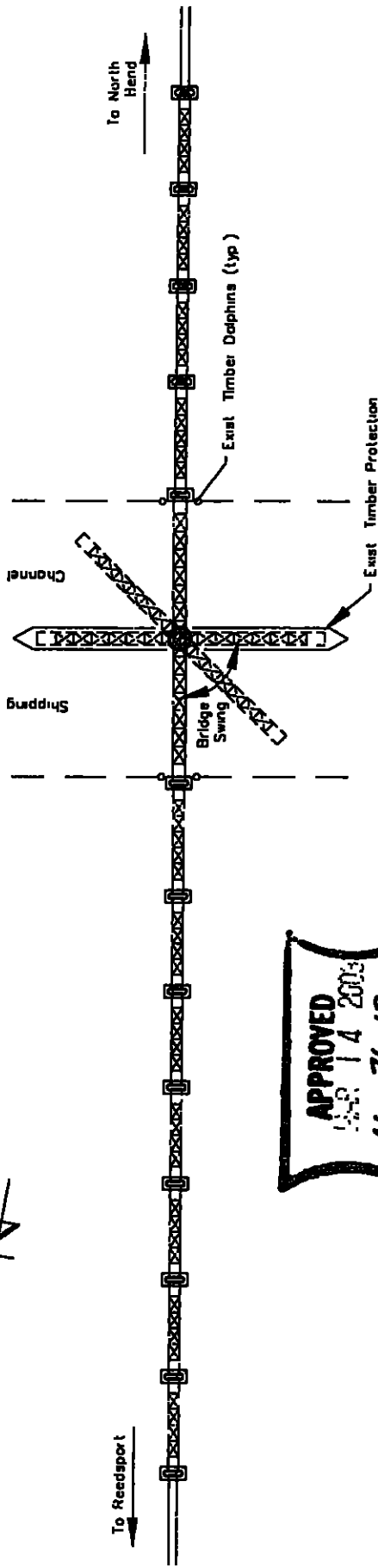
**JACOBSON**  
 POST OFFICE BOX 5210  
 LAKE OSWEGO, OREGON  
 TEL 503-624-3000  
 JACOBSON CIVIL, INC. FAX 503-624-3289

DATE  
 AUGUST  
 2002

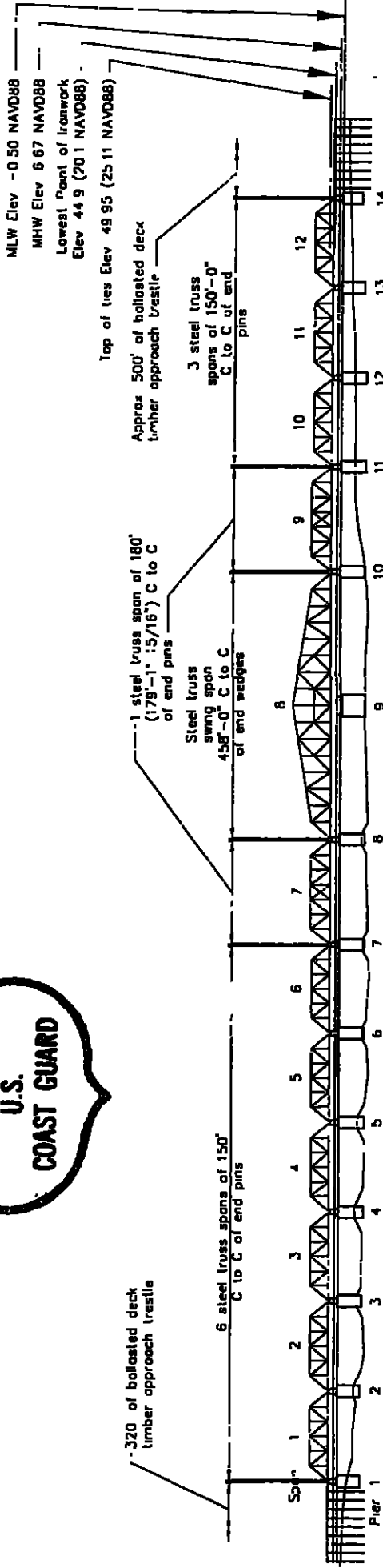
OREGON INTERNATIONAL PORT OF COOS BAY  
 COOS BAY RAILROAD BRIDGE  
 COOS BAY CHANNEL MILE 9.0 (14.5 km)  
 NORTH BEND, COOS COUNTY, OREGON

LOCATION MAP

SHEET  
 1  
 OF  
 9



PLAN

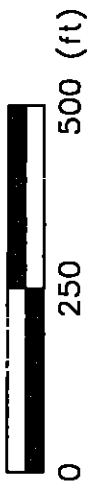


Notes Top of Ties and Lowest Point of Ironwork elevations are taken from drawings of original construction, circa 1914 to 1917. The adjustment to NAVD88 is based on Benchmarks OA0538 and OA0537 located on Pier 14.

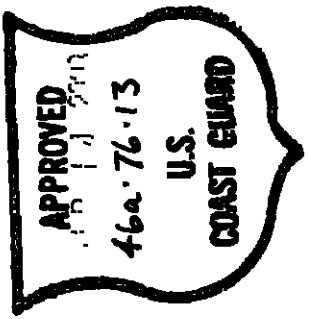
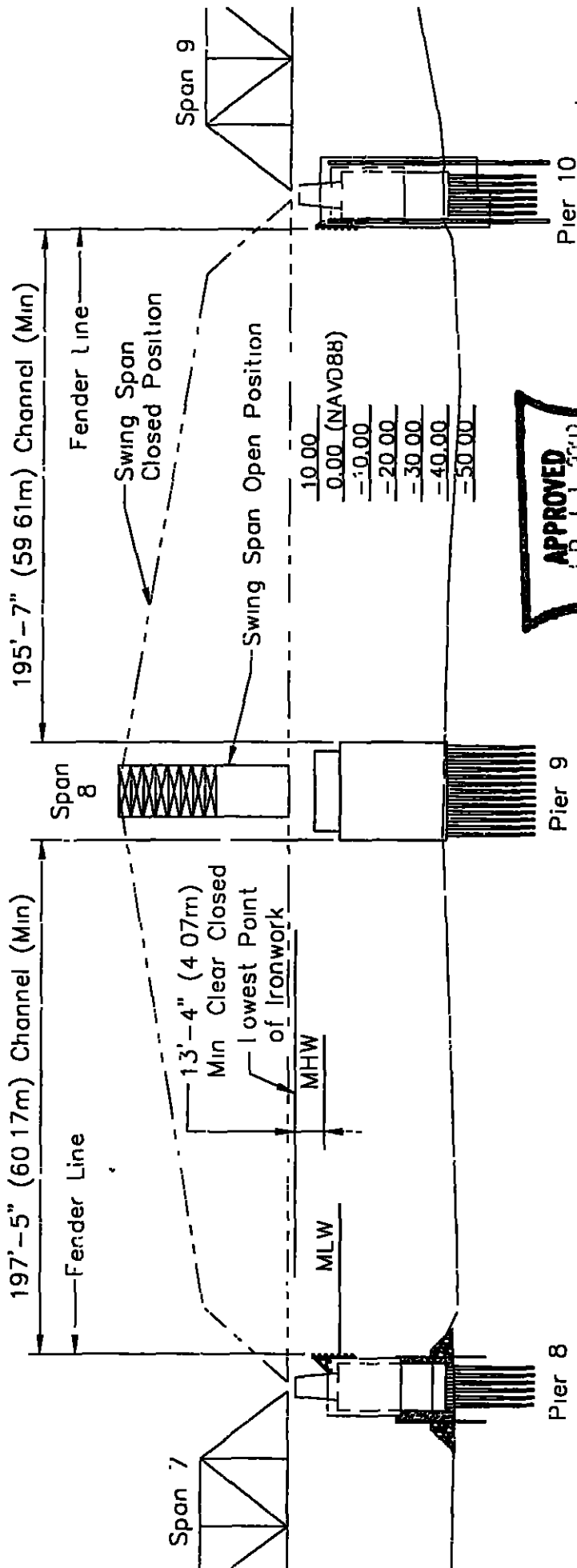
ELEVATION

Mean High Water and Mean Low Water elevations are approximate interpolations between Tidal Benchmark OA0513 at Empire and Tidal Benchmark OA0654 at North Bend. The Mean Lower Low Water (MLLW) interpolated elevation is -0.80 (NAVD88).

All elevations are shown in feet

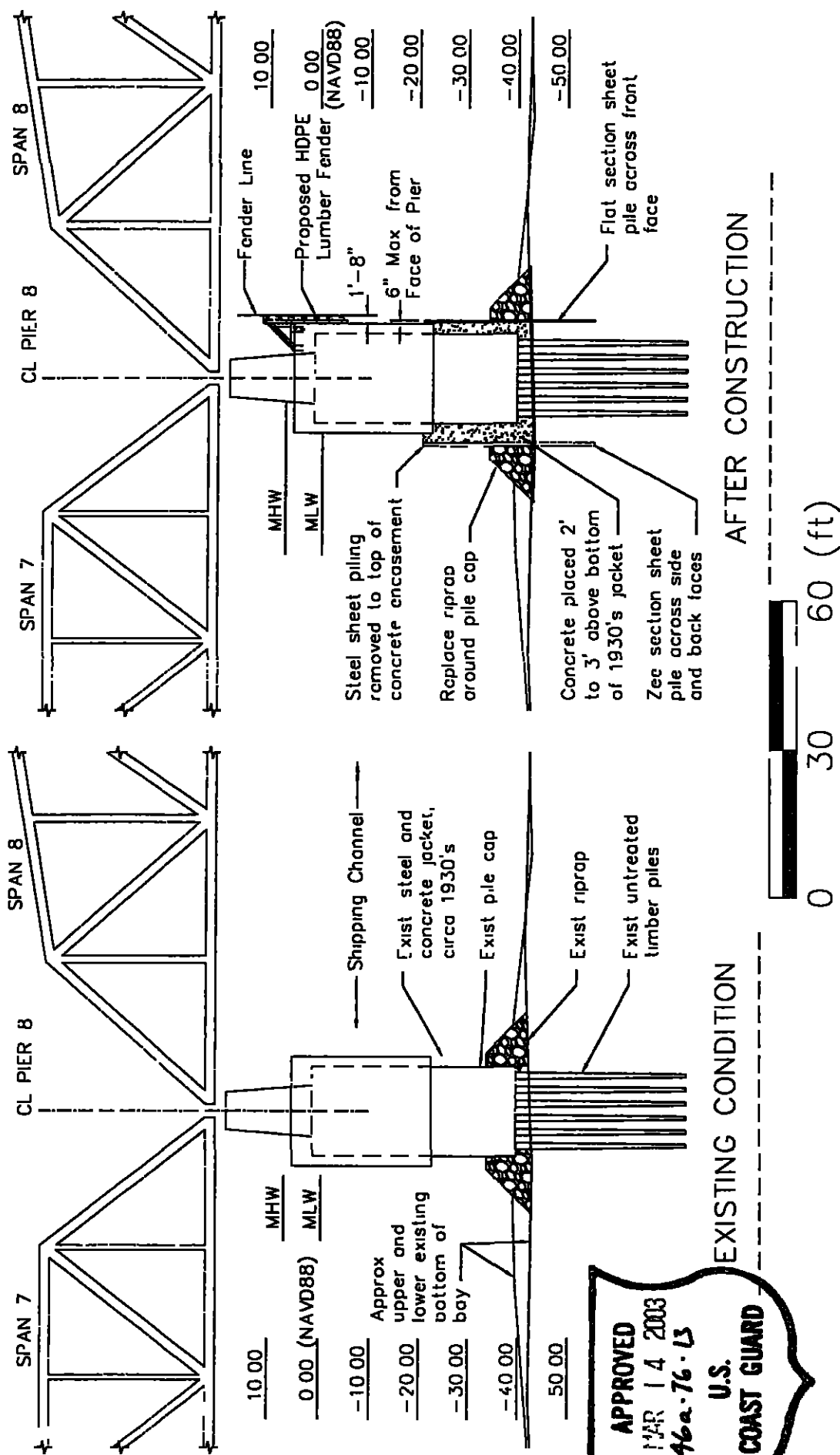


<b>JACOBSON</b> POST OFFICE BOX 5210 LAKE OSWEGO, OREGON TEL: 503-624-3000 JACOBSON CIVIL, INC FAX 503-624-3289	DATE AUGUST 2002	OREGON INTERNATIONAL PORT OF COOS BAY COOS BAY RAILROAD BRIDGE COOS BAY CHANNEL MILE 9.0 (14.5 km) NORTH BEND, COOS COUNTY, OREGON	BRIDGE PLAN AND ELEVATION	SHEET 2 OF 9
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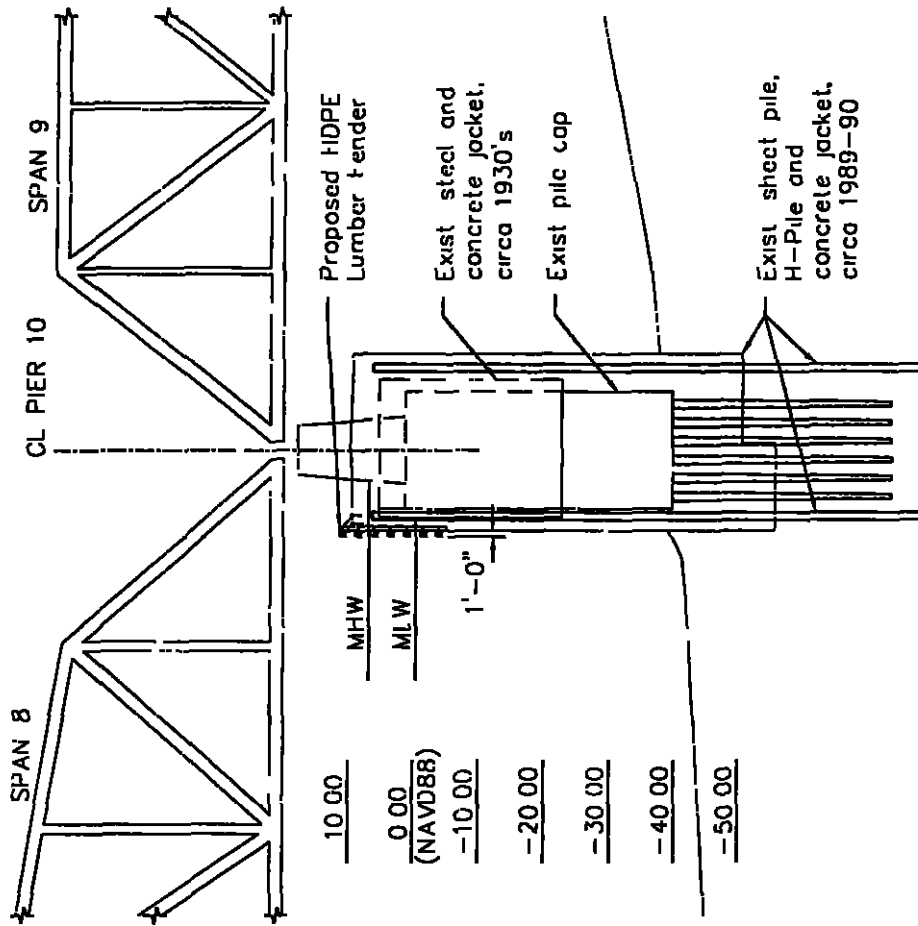
<b>JACOBSON</b> POST OFFICE BOX 5210 LAKE OSWEGO, OREGON TEL 503-624-3000 FAX 503-624-3289	DATE AUGUST 2002	OREGON INTERNATIONAL PORT OF COOS BAY COOS BAY RAILROAD BRIDGE COOS BAY CHANNEL MILE 9.0 (14.5 km) NORTH BEND, COOS COUNTY, OREGON	SWING SPAN ELEVATION SHEET 3 OF 9
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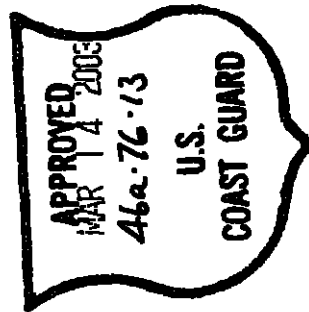


<b>JACOBSON</b> POST OFFICE BOX 5210 LAKE OSWEGO, OREGON TEL 503-624-3000 FAX 503-624-3289	DATE AUGUST 2002	OREGON INTERNATIONAL PORT OF COOS BAY COOS BAY RAILROAD BRIDGE COOS BAY CHANNEL MILE 9.0 (14.5 km) NORTH BEND, COOS COUNTY, OREGON	SHEET 5 OF 9
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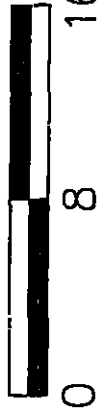
PIER 8  
ELEVATIONS



EXISTING CONDITION



<b>JE JACOBS</b> JACOBS CIVIL, INC.	POST OFFICE BOX 5210 LAKE OSWEGO, OREGON TEL 503-624-3000 FAX 503-624-3289	DATE AUGUST 2002	OREGON INTERNATIONAL PORT OF COOS BAY COOS BAY RAILROAD BRIDGE COOS BAY CHANNEL MILE 9.0 (14.5 km) NORTH BEND, COOS COUNTY, OREGON	PIER 10 ELEVATION	SHEET 6 OF 9
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Note. Pier 8 shown, Pier 10 similar

HP10x57 Steel Brackets w/ 1 1/4" Ø Anchor Bolts

Bevel ends 30°

8x12 Reinforced Composite HDPE Lumber

12x12 Reinforced Composite HDPE Lumber

2'-6" (typ)

MHW

4'-0"

MLW

4'-2"

16'-0"

PLAN

46'-0" at Pier 8, 53'-0" at Pier 10

APPROVED

4/26/13

46a-26-13

U.S. COAST GUARD

SECTION

ELEVATION

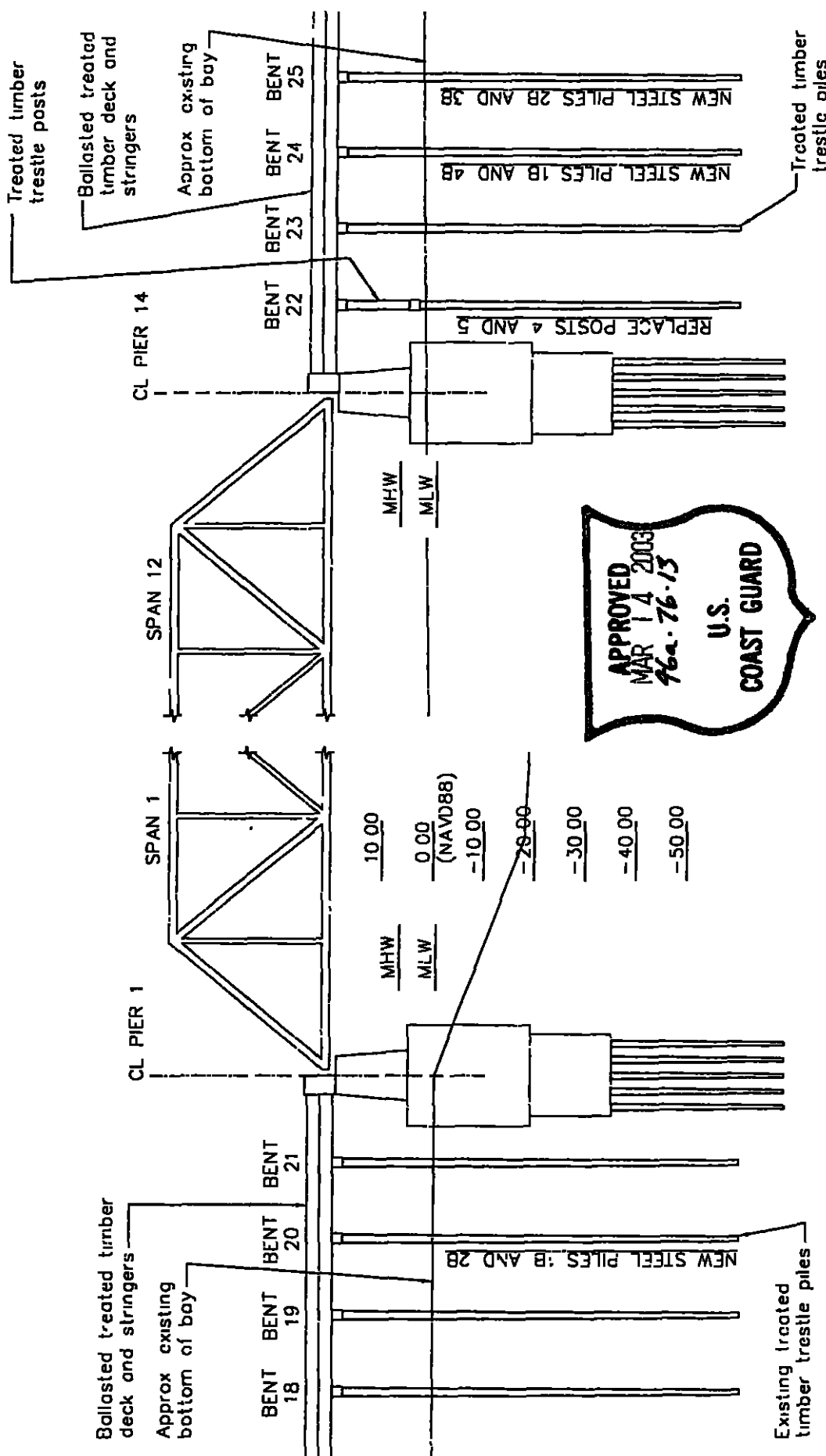
**JACOBSON**  
JACOBS CIVIL, INC  
POST OFFICE BOX 5210  
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TEL 503-624-3000  
FAX 503-624-3289

DATE  
AUGUST  
2002

OREGON INTERNATIONAL PORT OF COOS BAY  
COOS BAY RAILROAD BRIDGE  
COOS BAY CHANNEL MILE 9.0 (14.5 km)  
NORTH BEND, COOS COUNTY, OREGON

PIER 8 & 10  
FENDER DETAILS

SHEET  
7  
OF  
9



ELEVATION AT PIER 1

ELEVATION AT PIER 14

**JACOBSON**  
 POST OFFICE BOX 5210  
 LAKE OSWEGO, OREGON  
 TEL 503-624-3000  
 FAX 503-624-3289

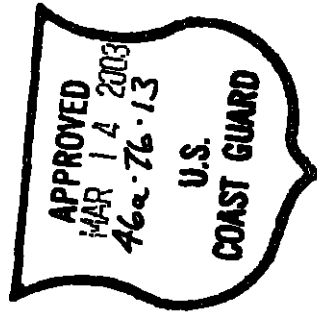
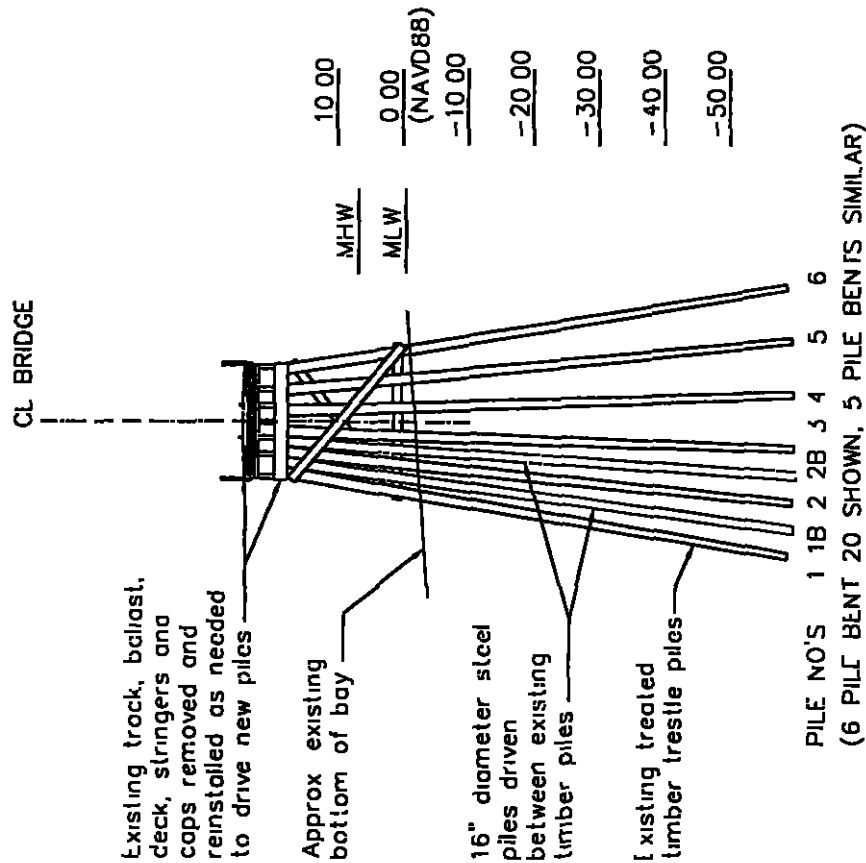
DATE  
 AUGUST 2002

OREGON INTERNATIONAL PORT OF COOS BAY  
 COOS BAY RAILROAD BRIDGE  
 COOS BAY CHANNEL MILE 9.0 (14.5 km)  
 NORTH BEND, COOS COUNTY, OREGON

APPROACH TRESTLE  
 ELEVATIONS

SHEET 8 OF 9





TYPICAL SECTION

**JACOBSON**  
POST OFFICE BOX 5210  
LAKE OSWEGO, OREGON  
TEL 503-624-3000  
JACOBSON CIVIL, INC. FAX 503-624-3289

DATE  
AUGUST  
2002

OREGON INTERNATIONAL PORT OF COOS BAY  
COOS BAY RAILROAD BRIDGE  
COOS BAY CHANNEL MILE 9.0 (14.5 km)  
NORTH BEND, COOS COUNTY, OREGON

TRESTLE BENT  
SECTION

SHEET  
9  
OF  
9

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commander  
Thirteenth Coast Guard District

915 Second Avenue  
Seattle, WA 98174-1087  
Staff Symbol: dpw  
Phone: (206) 220-7270  
Fax: (206) 220-7266

16591  
June 23, 2008

Mr. Michael F. Gaul  
Deputy Executive Director  
Port of Coos Bay  
125 West Central Avenue  
P.O. Box 1215  
Coos Bay, OR 97420-0311

Dear Mr. Gaul:

We have the authority to require that bridges or causeways are removed when the owners discontinue the use of these structures for transportation purposes. The authority is found in 33 U.S. Code 502(a). Furthermore, case law has supported our authority to order the removal of abandoned structures. For example, case law has established that "A bridge across a navigable stream is an obstruction to navigation tolerated only because of necessity and the convenience of commerce on land..." It is current Coast Guard policy to seek removal of all abandoned bridges that cross navigable waters. The three structures named in your recent letter qualify for removal, if land traffic use is abandoned.

If this does not fully answer the question in your letter of June 19, 2008, please call me at (206)220-7282.

Sincerely,

A handwritten signature in black ink, appearing to read "Austin Pratt".

Austin Pratt  
Chief, Bridge Section (dpw)  
By direction of the District Commander

### VERIFICATION

I, Mike Gaul, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

A handwritten signature in black ink, appearing to read "Mike Gaul", is written over a horizontal line.

Mike Gaul  
Deputy Executive Director and  
Harbormaster  
Oregon International Port of Coos Bay

Dated: 9/11/08

**5**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

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**REPLY VERIFIED STATEMENT OF DANA SIEGFRIED**

**Exhibit 5**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

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**REPLY VERIFIED STATEMENT OF DANA SIEGFRIED**

My name is Dana Siegfried and I am a Senior Associate and Senior Project Manager for David Evans and Associates, Inc (DEA). I have worked in the environmental permitting field for 23 years, including several years each working for the Portland District Corps of Engineers ("Corps"), the Oregon Department of State Lands ("DSL"), and the Oregon Department of Environmental Quality ("DEQ"). While at these agencies, I evaluated thousands of applications for projects, including many for construction and/or demolition within Oregon estuaries. I have been employed at DEA for over ten years. I am currently serving as the environmental permit manager for the proposed new Port of Coos Bay slip, a major estuarine construction project, and led permitting for bridges and pipelines within Oregon estuaries during my tenure at DEA. Additional information on my qualifications and experience are included in Attachment A to this Statement.

The purpose of this Verified Statement is to present my evaluation of the Central Oregon & Pacific Railroad's ("CORP") net liquidation value ("NLV") regarding the environmental costs associated with the removal of the bridges over the Siuslaw and Umpqua Rivers as contained in the Verified Statement of Timothy J Maloney. First, I note that Mr. Maloney and the two

engineers he relies upon, list no experience with projects in the State of Oregon. I believe this is a fatal flaw in Mr. Maloney's evaluation. In Oregon, the Coastal Zone Management Act and the listing of coastal coho as threatened under the Endangered Species Act heighten agency scrutiny and result in very stringent permit conditions and impact minimization measures for construction work within estuaries. Moreover, Oregon has been a leader in implementing national and state environmental statutes; state environmental agencies such as the Department of State Lands, the Department of Fish and Wildlife and the Historic Preservation Office closely scrutinize projects and direct applicants to employ construction means, methods, and schedules that are more stringent than those proposed in the application. Often, the outcome of permit reviews is permit conditions that not only minimize impacts, but actually result in improvements to the affected habitats.

Based upon my experience with a multitude of projects in Oregon, I have developed a revised estimate of the permitting costs associated with removing the Umpqua and Siuslaw bridge structures. As shown in Attachment B to this Statement, the estimate of the permitting cost associated with the removal of these two bridges would be \$473,914.

I understand that the Oregon International Port of Coos Bay ("Port") is addressing elsewhere in their Reply that will include my Verified Statement the net costs associated with the actual demolition work for the bridges.

I have reviewed the Verified Statement by Mr. Maloney, and find that the permitting costs he identifies are either based on erroneous assumptions or lack support, or both.

First, Mr. Maloney asserts that cofferdams will not be required, and that a turbidity curtain will be adequate to contain and control turbidity. Based on my project experience, I

believe this is a faulty assumption. For a recent project within the Coos Bay Estuary – replacement of the Kentuck Slough Bridge – the Corps and DSL permits required a solid containment system during both demolition and construction. The Kentuck Slough Bridge is small in comparison to either of the railroad bridges over the Siuslaw and Umpqua Rivers. It is highly unlikely that permitting agencies would require less stringent turbidity containment measures for removal of these bridges.

Second, Mr. Maloney states that containment for lead based paint abatement will be required only at shear points, because a protective sealant would be used to cover the paint during removal. The bridge is in poor condition, and the paint is not tightly adhered to the steel over most of the structure, as shown in Attachment C. Because of this, and to protect the sensitive estuarine ecosystem, the sealant may have to be sprayed over most of the bridge. This will require full containment so that the sealant does not enter the waterway. Mr. Malone provides no cost estimate for this containment system; therefore, the demolition costs are underestimated.

Mr. Maloney also asserts that an Environmental Assessment or Environmental Impact Statement will not be required. No basis is provided for that assumption. The lead agency for any federal action, in this case the Surface Transportation Board, must comply with the National Environmental Policy Act (NEPA). Compliance requires the agency to demonstrate that a Categorical Exclusion applies to the project, or the agency must prepare either an Environmental Assessment (EA) or Environmental Impact Statement (EIS). There is no Categorical Exclusion that would apply to this project. The STB has prepared an Environmental Assessment; however, it does not address the alternative of removing the bridges, nor the environmental impacts associated with the demolition. This analysis of impacts to the environment must be completed.



prior to federal approval of bridge removal. In projects that include complex environmental issues, such as demolition of a large historic structure in threatened species habitat, federal agencies often rely on third parties to prepare the NEPA document. The third party (typically an environmental consulting firm) works at the direction of the lead agency, which is reimbursed by the applicant for the costs associated with NEPA document preparation. Therefore, the permitting cost estimate attached includes preparation of an agency review draft EA, public comment EA, and the Finding of No Significant Impact.

It has been suggested that the Corps could issue a nationwide permit for the removal of the bridges. The Corps, even in a case where a nationwide permit could apply, has the discretion to require an individual permit if the impacts of the project may be more than minimal. Given the sensitive nature of the estuaries, the poor condition of the bridge, and the presence of threatened coastal coho salmon in these estuaries, it is possible that the Corps would not issue a nationwide permit for this major demolition project. Even if the Corps were to issue a nationwide permit for the work, they can condition the permit to require any and all measures necessary to ensure impacts are minimal. In this case, such conditions would include conducting in-water work within the appropriate winter work window, encapsulating the bridge to prevent lead paint or sealant from entering the estuary, and installation of cofferdams or sheet pile containment systems.

It is also more likely than not that the Corps would require removal, not only of the main bridge span, but also the timber trestle spans and any other treated timber in or near the estuaries. Timbers for trestles are infused with creosote, which leaches into the water for many decades after their placement. To prevent continued leaching of this toxic substance into the estuary and

threatened coho salmon habitat, removal of the piling at or below the mud line would be required.

Moreover, issuance of a nationwide permit does not obviate the need for complying with all other applicable laws. Therefore, compliance with the Section 7 of the ESA will require preparation of a BA and consultation with National Marine Fisheries Service. Also, given the scale and significance of the bridges, compliance with Section 106 of the National Historic Preservation Act will require extensive mitigation and thorough documentation of the structures to the standards of the Historic American Engineering Record, according to the Oregon State Historic Preservation Office.

Mr. Maloney does not itemize the permitting costs he has identified, so there is no support for his conclusions. It is not possible to know whether he included obtaining local permits in compliance with the Coastal Zone Management Act, preparation of a Biological Assessment in compliance with the Endangered Species Act, or documentation in support of compliance with the Historic Preservation act or state Water Quality Certification. Moreover, Mr. Maloney does not include any time at all for specially trained inspectors to monitor construction compliance with all of the required permits and their special conditions.

In contrast, the permitting cost estimate attached includes the time to conduct the following activities which based upon my experience would be necessary as part of the permitting for the removal of the Umpqua and Siuslaw rail bridges:

- Inspection and documentation of the historic bridges by a historian
- Field time for biologists to assess the quality of habitat present and effect on threatened and endangered species

- **Field time for a wetland determination to demonstrate that no wetlands will be impacted**
- **Preparation of draft and final cultural resources report**
- **Preparation of draft and final Biological Assessment**
- **Preparation of draft and final Wetland Determination**
- **Preparation of agency review draft EA, public review draft EA, and finding of no Significant Impact**
- **Weekly inspections by specially trained environmental construction monitors**
- **Time for specialists in the above fields to consult as required by law with their counterparts at the state and federal permitting and natural resource agencies**

**In conclusion, based upon my first-hand and extensive experience with construction and demolition projects within the Oregon estuaries, I believe Mr. Maloney's permitting estimate is flawed and unsupported. Further, based upon my experience the attached proposal is an accurate and supported estimate for the environmental permitting costs associated with the removal of the Umpqua and Siuslaw rail bridges.**

**Dana Siegfried**  
**Senior Project Manager**  
**David Evans and Associates**

**Professional Profile**

- Over 20 years of experience in environmental permitting and regulation; 10 years in environmental consulting
- Excels at project management, appointed David Evans and Associates, Inc Portland office Project Management Program Coordinator/Trainer
- Combines extensive knowledge of state and federal environmental regulations with crisp project management style and client advocacy to achieve client's desired permitting results and schedule
- Provides quality control, senior review and mentoring for the projects of others

**Employment History**

**David Evans and Associates, Inc. - 1998 to present**

- Project Manager and Senior Associate at David Evans and Associates, Inc. Oversee and manage teams of biologists, GIS staff, engineers, and subconsultants to achieve client goals for project permitting.
- Focused primarily on energy permitting, including Oregon EFSC for past 6 years. Clients included developers of gas-fired and wind generation, and biofuel refiners
- Conduct business development activities, including maintaining contacts with clients and prospective clients, preparing proposals including scope, schedule, budget and DEA's value proposition; assist other DEA offices develop contacts and proposals, attend selected conferences, seminars, and other energy industry activities
- Manage projects up to \$1,000,000 in value.
- Assess and evaluate ongoing performance of DEA project managers; develop and implement informal training program, mentor and coach Project managers and task leaders; develop and implement recognition program for project managers.

**Port of Portland - 1995 to 1998**

- Project manager for Port's water-related environmental issues, projects and permits.
- Worked with permit agencies to develop a comprehensive program for assessing dredge activities and sediment disposal options within a streamlined permitting framework.
- Initiated Port's storm water program for Marine, Airport, and Land Development facilities
- Initiated Port's deicing containment program.

**Oregon Department of Environmental Quality -1992 to 1995**

- Evaluated applications for Clean Water Act Section 401 Water Quality Certifications statewide
- Developed procedures with Department of State Lands to streamline coordination between the agencies on permit actions

**Oregon Department of State Lands – 1988 to 1992**

- Conducted wetland delineations and determinations for jurisdictional purposes.
- Evaluated applications for Removal-Fill permits for waterway development.
- Participated in rule writing

US Army corps of Engineers – 1985 to 1988

- Conducted wetland delineations and determination for jurisdictional purposes.
- Evaluated applications for Clean Water Act Section 404 permits

### **Education**

- M S in Oceanography, Oregon State University
- BS in Zoology, University of Texas

### **Energy Project Experience**

- Managed preparation of EFSC application for site certificate for Golden Hills Wind Project for BP Alternative Energy; 400 MW project in Sherman County Oregon.
- Managed preparation of EFSC application for site certificate for Klondike III Wind Project for PPM energy; 300 MW project in Sherman County Oregon.
- Managed EIS preparation for Biglow Canyon and Klondike III projects interconnection with BPA substations for Bonneville Power Administration in Sherman County.
- Managed preparation of EFSC application for site certificate for Pacific Ethanol, 40 million gallons per year of production in Morrow County Oregon
- Managed or participated in preparation of EFSC application for site certificate for Turner Energy Center for Calpine, Coburg Generating Plant, Portland General Electric's Port Westward Generating Plant, and Scenic Vista wind project for SeaWest.

PERMITTING BUDGET REMOVAL OF UMPQUA/SIUSLAW BRIDGES

Project Number

Project Name

Project Budget @

Sub/Non-Labor

PROJECT TASKS	Sr PM	Level 3	Level 2	Level 1	Graphics	Admin	HOURS	FEE
	\$195.00	\$154.38	\$113.75	\$81.25	\$81.25	\$60.13		
Umpqua								
Coast Guard	16	8	24				48	\$7,085
Corps	24	24	60	40	24	20	192	\$21,613
DSL	24	24	60	40	24	20	192	\$21,613
DEQ401	20	20	60	40	24	20	184	\$20,215
DEQ402	8	12	40				60	\$7,963
DLCD	12	20	40				72	\$9,978
SHPO	20	24	60		20	20	144	\$17,258
USFWS/NMFS	20	40	60		16	16	152	\$19,162
Env Monitoring	40			240			280	\$27,300
Sluslaw								
Coast Guard	16	8	24				48	\$7,085
Corps	24	24	60	40	24	20	192	\$21,613
DSL	24	24	60	40	24	20	192	\$21,613
DEQ401	20	20	60	40	24	20	184	\$20,215
DEQ402	8	12	40				60	\$7,963
DLCD	12	20	40				72	\$9,978
SHPO	20	24	60		20	20	144	\$17,258
USFWS/NMFS	20	40	60		16	16	152	\$19,162
Env Monitoring	40			240			280	\$27,300
NEPA (both bridges)	120	160	120	300	120	120	940	\$103,091
Project Management (both bridges)	240					160	400	\$56,421

728 504 928 1020 472  
\$141,960 \$77,808 \$105,560 \$82,875 \$28,381

Total Estimated Personnel Hours

3988

Total Estimated Labor Cost

\$463,884

\$463,884

Estimated Expenses

Est. Base Cost:

Supplies - @ cost

5000

Auto travel @ \$ 585 per mile (2008 rate)

\$5,000.00

Reproduction and Deliveries

8000

Lodging, Meals, Car Rental, Air and other travel

4000

Subcontractor 1

Total Estimated Expenses

\$22,000

\$24,200

Total Estimated Project Cost

\$488,084

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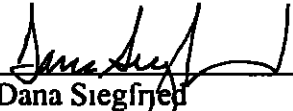
9/5/2008

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### VERIFICATION

I, Dana Siegfried, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

  
\_\_\_\_\_  
Dana Siegfried  
Senior Associate, Senior Project Manager  
David Evans and Associates, Inc.

Dated: 9/11/2005



6

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

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**JOINT REPLY VERIFIED STATEMENT  
OF  
CHARLES H. BANKS AND GENE A. DAVIS, P.E.**

**Exhibit 6**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35160**

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**OREGON INTERNATIONAL PORT OF COOS BAY  
—FEEDER LINE APPLICATION—  
COOS BAY LINE  
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

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**JOINT REPLY VERIFIED STATEMENT  
OF  
CHARLES H. BANKS AND GENE A. DAVIS, P.E.**

This verified statement was prepared jointly by Charles H. Banks and Gene A. Davis, our qualifications are described elsewhere in the Oregon International Port of Coos Bay ("Port") Reply and Application and will not be repeated here. The purpose of this verified statement is to provide details on the Port's plan to implement service on the active portion of the Line and to re-open the embargoed portion of the Line. In addition, this verified statement provides evidence on the costs identified to date, associated with those tasks.

**A. Rail Service Implementation**

The Port will be faced with three primary tasks when it assumes ownership of the Coos Bay Line, namely:

1. ensuring that rail freight service is provided on the Initial Segment (Danebo-Vaughn) which has not been embargoed,
2. rehabilitating the Vaughn - Cordes and the Cordes - Coquille segments which have been embargoed, including tunnel, bridge, track and roadbed and grade crossing work necessary to support resumption of operations and then investing enough capital in infrastructure maintenance renewal to keep the infrastructure in a steady state condition and

3. creating an operational structure, i.e., developing the institutional, commercial and legal structures and arrangements to manage and operate the line

The Supplemental Verified Statement of Charles H. Banks dated August 8, 2008 identified the designation by the Port of a Rail Manager as “a logical first step in implementing rail operations” (SVS Banks, page 3). Upon designation, that individual would assume primary responsibility for the rail service implementation activities described in this statement<sup>1</sup>. In addition, this statement identifies the need for and responsibilities of a Construction Manager.

#### **B. Initial Segment (Danebo-Vaughn) Service**

The need to operate the Initial Segment on an interim basis while the remainder of the line is being restored was addressed in the Supplemental Verified Statement of Charles H. Banks dated August 8, 2008. Since that statement, the Port has issued a “Request for Proposals Interim Service Operator Eugene – Vaughn Oregon” which is attached as Attachment A to this statement. A list of potential operators has been compiled, including several who have expressed interest in becoming the Port’s operator (SVS Bishop page 3). The Port’s readiness to see that service is provided on that segment is self-evident.

#### **C. Rehabilitating the Vaughn - Cordes and Cordes - Coquille Segments**

Before operations can resume on the embargoed line between Vaughn and Coquille many aspects of CORP’s neglected maintenance must be addressed. The following plan outlines the steps necessary to return the railroad infrastructure of the Coos Bay Line to serviceable condition. It assumes that the Port will own the rail line between Danebo and Cordes and will lease the line owned by Union Pacific between Cordes and Coquille. While the line west of Vaughn is being rehabilitated, it is anticipated that an Interim Operator will provide freight

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<sup>1</sup> The Port plans to vest responsibility for rail matters in Martin Callery, Port Director of Communications and Freight Mobility, until a Rail Manager is designated.

service between Eugene/Danebo and Vaughn. The Port will commission a program of spot (as-needed) tie replacement and track surfacing performed either by the Interim Operator or a track contractor with the intent of raising the maximum freight train speed on the Danebo - Vaughn segment to 25 miles per hour (FRA Class 2 track)

The remainder of the line (between Vaughn and Coquille) will remain out-of-service, with no freight service being provided until the entire line can be reopened. The goal of the initial restoration will be to bring as much as possible of the line up to 25 miles per hour, certainly enough of the line so that a train crew consistently can make the trip between UP's Eugene Yard and Cordes including time to perform necessary switching at origin and en route in less than the twelve hour maximum time on duty permitted under Hours of Service regulations. Assuming that UP intends to have the Port's new operator lease the Cordes - Coquille segment, the Port will bring that section up to FRA Class 1 (10 miles per hour) condition. All activities described below pertain to the Vaughn - Cordes and Cordes - Coquille segments, unless otherwise specified

After the rehabilitation described in this plan is completed, long term operations between Eugene/Danebo and Coquille will be contracted to a shortline operator under a separate contract from that of the Interim Operator. Long term maintenance may be performed under the same contract or procured separately. Should circumstances dictate that the Port be the Long Term Operator, a plan similar to that described herein will be instituted.

### **Step 1: Hire a Construction Manager**

The first step will be hiring a Construction Manager to oversee contracts and work necessary to restore service. It is preferable that the Construction Manager have experience in railroad track, bridge or tunnel construction or maintenance. The Construction Manager could

be an individual hired by the Port or the position could be filled by an engineering consulting firm, in which case a specific individual should be designated as Construction Project Manager. The position should be viewed as a short term one; once rehabilitation is complete, it is unlikely that a full-time manager with engineering credentials and experience would be needed unless the Port assumes direct operation and maintenance of the rail line.

The Construction Manager will be responsible for: 1) seeking, receiving and evaluating bids from construction contractors; 2) coordinating work assignments and rail line access among contractors; 3) overseeing the quality of the work as it is performed and, finally, 4) carrying out acceptance review and testing of the work performed under the various contracts. The Construction Manager may obtain outside engineering assistance to assist with oversight and acceptance testing but, in any case, will interface with the Port's Rail Manager in matters related to operator procurement, mobilization and startup.

### **Step 2 and Critical Path: Tunnel Restoration**

Tunnel restoration is estimated to require four months (all time estimates are preliminary and subject to change). Unless unexpected problems develop, most likely in the area of bridges, tunnel restoration is expected to take longer than any other work element. As a result, the sequence that includes hiring a Construction Manager, securing a tunnel contractor and performing tunnel restoration work comprises the likely critical path to getting the entire line back in service at the earliest possible date. All tunnels are located on the Vaughn - Cordes segment so the start of tunnel work is not dependent upon conclusion of the Cordes - Coquille UP lease negotiations.

Tunnel restoration work is expected to consist of reviewing materials already in the Port's possession, conducting an updated inspection, prioritizing repair recommendations,

preparing bid documents detailing the projects, awarding multiple projects to be worked on simultaneously, monitoring progress and adjusting non-tunnel work element time frames, as necessary.

### **Step 3: Lease Cordes - Coquille Segment from UP**

The 23.4 mile segment between Cordes and the end of track near Coquille is owned by UP and currently leased to CORP. Port representatives have not had access to the segment to conduct a detailed inspection, however the line was designated as Excepted Track by CORP and is believed to be in poor condition in terms of track surface as well as rail and tie condition.

The expected sequence of events is that lease negotiations will be initiated and at some point UP will allow Port staff or its representatives, including the Construction Manager if already designated, to access the line to assess its rehabilitation needs. However, it is possible that UP will not allow such access until a lease is signed. In either event, the Port will move as quickly as possible to assess needs and contract repairs.

Negotiating and executing a lease of the Cordes - Coquille segment will be the responsibility of the Port's executives, including the Rail Manager, once designated. The Construction Manager will support the lease process as needed. Negotiations should be initiated by the Port as soon as possible so that Port staff and consultants can access the line to assess its needs and contract out completion of all necessary repairs.

### **Steps 4: Line Clearing, Bridge Work, Rail Defect Inspection and Track/Roadbed Repairs**

The next series of activities - line clearing, bridge work, rail defect inspection and track/roadbed repairs - would be initiated at the same time as the process of obtaining a tunnel contractor but these activities are not considered to be on the critical path and hence warrant a slightly lower priority than getting the tunnel work underway.

These activities apply to both the Vaughn - Cordes and the Cordes - Coquille segments. The Port's contracting strategy and the RFPs it issues will recognize the possibility that the Cordes - Coquille lease may not be executed before rehabilitation contracts are bid and accepted, hence the Vaughn - Cordes and Cordes - Coquille segments may be treated differently in the contracts and the latter segment may not be available for contractors to initiate improvements as soon as the former.

Specific rehabilitation activities are as follows.

**Line Clearing.** The Port would hire a railroad track contractor based in the region to open the rail line so that subsequent work activities may benefit from full access and use of the rail line (except at certain tunnels). This contract would be limited to the sole purpose of line clearing and the contractor would not necessarily be the same one used on the larger track/roadbed repair contract but would be permitted to bid on the track/roadbed contract. Line clearing would consist of removing trees, rocks, mudslides, sand and other obstructions from the track, making sure that road crossings were usable by on-track equipment and vehicular traffic. This effort is expected to take about one week or slightly more. Because it is a relatively small contract, procurement and mobilization may be expected to proceed quickly and so this could well be the first rehabilitation work performed on the line.

**Bridge Work.** Along with tunnels, the line's bridges represent the greatest unknown as to the amount of work needed and duration of repairs; hence it is important to initiate the bridge inspection and necessary repair contracting process as soon as the Construction Manager is on board. The major bridges (over the Umpqua and Siuslaw Rivers) are thought to be in poor condition and since both are moveable bridges, the work necessary to make them serviceable will be known only after completion of a careful inspection and testing program.



The interlocked swing span bridge at Coos Bay (MP 763.6) is owned by the Port already and has been the beneficiary of federal and state rehabilitation funding. While additional funds previously stated for the Coos Bay rehabilitation may be reprogrammed to be used for line purchase and rehabilitation (Supplement to the Feeder Line Application at page 11), the Port has stated that it is committed to obtaining additional funding needed by this Line.

The bridge contractor also will be responsible for inspecting and repairing the line's smaller bridges as well as inspecting and cleaning out the line's culverts, as necessary. The smaller bridges and culverts can be attended to in less time than is anticipated will be required to complete tunnel repairs. While the Umpqua and Siuslaw bridges are deemed a risk of becoming critical path items, there are over 60 bridges that exceed 100 feet in length on this Line and many of them will likely require immediate repairs.

Bridge work is anticipated to consist of an updated bridge inspection. Next would be a prioritizing of necessary immediate repairs, followed by the bid preparation, job showing, contract award and construction monitoring activities.

**Internal Rail Flaw Detection Testing.** The entire Danebo - Coquille segment should be tested to detect internal rail flaws. (The process often is called Sperry testing after one of the major testing suppliers. Another major supplier is Holland and an example of the test print-out of the Line performed in July 2007 is in Volume III, starting at CORP001179). This test would be performed by a contractor using equipment in a hi-rail-equipped truck, supplemented by tests conducted on the ground where there is indication of a flaw or a problem in getting a good reading, often as the result of rusty rail. A hi-rail test vehicle is specified as opposed to the self-propelled railcar version because the hi-rail vehicle can access the line at numerous points and can test right up to both ends of the tunnels that cannot be traversed.

This testing would take approximately one week or somewhat longer, depending upon the number of manual tests. It should be scheduled to coincide closely with the full mobilization of the track contractor. (See below ) The track contractor should have staff, equipment and material (spare rail) to follow behind the testing to facilitate the changing out of defective rails. However, it is desirable to conduct the testing and rail change out in the early stages of the track and right-of-way work, so close timing will be beneficial.

After the tunnel rehabilitation is complete, rails within all tunnels on the line also should be tested using either the same equipment or machines more appropriate to the more limited application. The flaw detection contractor may need to be called back to the line to complete its testing if the tunnels have not been reopened before the rail has been tested all the way to Coquille. Similarly, the track contractor may have to be recalled to the line to change out any rail flaws detected in the tunnels if the track contractor previously had completed its work.

**Track/Roadbed Repairs.** The final element in this group of contracts to be let would cover track and roadbed repairs and improvements. This contractor's responsibilities (to be detailed in the RFP) will include rail and tie replacement, track surfacing, repairs to grade crossing surfaces, switch inspection, adjustment and repair, removal of debris from the right-of-way and other activities, as assigned,

The scope will include a tie program (replacement of 600 (plus or minus) ties to the mile as determined by the Construction Manager) over approximately one-fourth of the approximately 95 miles between Vaughn and Cordes. (The tie program does not have to be within a single, 24-mile segment. It can focus on several separate, four or five-mile segments where tie condition is the worst.) The segments that receive the tie program also will be surfaced as part of the

program work. The balance of the line will experience spot tie replacement and spot surfacing as needed to address FRA defects and achieve the running time goal

Continuing tie programs are envisioned over the three following years with the other three-fourths of the Vaughn - Cordes segment receiving new ties. At the end of the fourth year, the worst tie conditions along the entire Vaughn - Cordes segment will have been renewed through major tie replacement and surfacing programs. In the next year, the Vaughn - Danebo segment would receive a tie surface program, which would complete such work over the entire Port - owned line. The Cordes - Coquille segment would be scheduled to receive a tie and surfacing program when and as needed, once a detailed inspection takes place.

#### **Step 5: Grade Crossing Signal Restoration**

*The line contains approximately fifteen public crossings with flashers or flashers and gates, as shown below. Crossing protection devices need to be restored to proper working order before revenue operations commence but no sooner. During line rehabilitation, on-track equipment used by contractors should treat all crossings as unsignaled and protect their movement across road crossings.*

A signal contractor will be engaged to put the crossing protection into service at a time that coincides with completion of critical path work and reopening the line. The signal contractor also will maintain and inspect the signals from completion of the restoration until assumption of that responsibility by the Long Term Operator or other party designated by the Port.

### **Public Crossings with Active Protection**

<b>Crossing</b>	<b>Milepost</b>
Mapleton Hwy,	698.7
Hillcrest Rd,	705.5
Florence-Eugene Hwy,	705.7
Walker Creek Rd,	709.1
Florence Eugene Hwy,	709.35
Canary Rd,	720.3
Umpqua Hwy,	740.3
Winchester Ave,	740.5
Lakeside Rd,	752.1
Saunders Lake Rd,	756.7
Horsfals Rd.	763.2
Lewis St	766.4
Green Acres Rd	777.6
Coquille - Bandon Hwy.	785.6
Cedar St.	785.9

Source: CORP Track Chart

#### **Step 6: Work Inspection and Acceptance**

The Construction Manager, with support from the Port's Rail Manager, will be responsible for inspecting, testing and accepting or rejecting all contractor work. The Construction Manager will coordinate the completion of contractor work with the assumption of maintenance responsibility by the selected Long Term Operator.

#### **Rehabilitation Cost**

The immediate plan would be to restore the Cordes - Coquille segment to FRA Class 1 (as opposed to Class 2 north of Cordes) but it is believed that the Cordes - Coquille track is in worse condition than that north of Cordes. Such track class and condition factors balance each other out in terms of rehabilitation cost per mile. Taking the above into account, the cost to rehabilitate the line between Danebo and Coquille is estimated to total \$23,688,100 (Details of the estimate are presented in Attachment B.)

## **Infrastructure Maintenance Renewal**

In order to meet the continuing needs of freight customers in southwest Oregon and avoid the same fate that CORP experienced on the Coos Bay Line, it will be necessary for the Port to invest continually in railroad infrastructure renewal. Such renewal will be comprised on two principal components: 1) program and 2) routine maintenance.

Program maintenance comprchnds the periodic, project and/or emergency replacement of track and bridge components, either partially or entirely, such as switch timbers, ties, rail, ballast and bridges, to renew the track structure plus the relatively lesser ratio of labor necessary to install rail, tie and ballast components. Routine maintenance covers the largely labor-intensive, day-to-day tasks performed by sections forces, necessary to ensure that the track structure is available to safely host a carrier's train operations and is generally limited to inspections, switch stand and rod adjustments, lubricating, welding, respiking, replacing broken rail, spot surfacing, tamping, signal department tests, inspection and emergency repair

As shown at the bottom of Attachment C, we believe that, on average, the Port will need to spend approximately \$4,500,600 or \$30,800 per track mile annually on program and routine maintenance to keep its infrastructure in a steady state condition, once it is rehabilitated. Of that total, approximately \$3,336,600 represents annual program maintenance expenditures while approximately \$1,164,000 represents annual routine maintenance expenditures, as detailed on Attachments D and E, respectively.

### **D. Creating an Operational Structure**

The Port will have responsibilities which will change as it progresses through establishing its own structure, developing the institutional, commercial and legal structures and arrangements to manage and operate the line, overseeing line rehabilitation and finally into long

term operation. This section outlines an initial approach to developing an operational structure; of course the Port may choose to alter its approach to better fit the emerging situation as it advances toward resumption of revenue operations.

### **Marketing**

The long term goals of restoring rail service to the Coos Bay Line (CBL) include the creation of a self-sustaining, for-profit railroad and it is important to structure the marketing role with this in mind. It is expected that the Long Term Operator, after being selected by the Port, will assume all marketing and operational roles that are normally associated with running a shortline railroad. The long term marketing responsibilities will include understanding the needs and demands of CBL's customers, understanding the costs of providing rail service on CBL so that CBL's owner earns a reasonable return and negotiates adequate revenue (rate) requirements on interline moves with the connecting railroads. Given the importance of those responsibilities to the long term success of the CBL and the need to build relationships with the customers and connecting railroads to accomplish them, the Long Term Operator must hold these responsibilities.

The Long Term Operator will be selected during the Interim Period and will be allowed a reasonable time of two to three months to assume the marketing responsibilities, among others, in preparation for its assumption of operations across the entire CBL.

The Interim Period is that period of time when operations are conducted over the eighteen miles of CBL (Interim Segment) between Danebo and Vaughn and when the balance of the line between Vaughn and Coquille is rehabilitated in preparation for return to service. During this time, traffic on the Interim Segment is expected to be limited, due to the presence of only one active shipper so marketing issues in the areas of rate and revenue requirement negotiations will

not be significant. It is therefore recommended that the Port negotiate with UP for a temporary adoption of an agreement similar to the current CORP – UP cooperative marketing agreement (CMA) with the Interim Operator named in place of CORP. This temporary adoption would expire upon completion of a new CMA between the Long Term Operator and UP or upon completion of the re-opening of the Line, whichever is sooner.

Marketing responsibilities during the Interim Period primarily will entail regularly communicating with the CBL customers, especially the largest ones, and other key stakeholders about progress made on the line's rehabilitation as well as periodically evaluating the shippers' demand for rail service. Traffic and customer information should be consolidated through the Port to eliminate inconsistent or erroneous information distribution. It is expected that these roles will be handled by the Port's Rail Manager, who also will be responsible for service restoration and, with the Construction Manager, line rehabilitation.

Continued discussion with customers of rehabilitation progress and of their transportation needs will help keep up their interest in and support of rail service restoration. It also will give the Port opportunities to uncover customer plans to change operations and physical plant which might hinder recovery of traffic from trucks back to the railroad. As the time between the embargo and the date of restored rail service increases, the willingness of past shippers to resume use of the line could diminish. So previous rail customers must be made aware and be confident that rail service will be restored and that pre-embargo shipping patterns and superior service can be restored. Expectations of traffic levels after service restoration must be considered carefully in order to create appropriate operating patterns and service frequency. While volume commitments from key customers are likely to be needed to ensure long term success, detailed discussions about them should be handled by the Long Term Operator.

In addition to regular personal contact, marketing communication during the Interim Period will be enhanced by adding pages to the Port website that will provide a consistent information platform for shippers and the general public. These pages should describe what has happened to date, and what is expected to happen in the future. A Frequently Asked Questions module should be added to the Port's website, as well as an opportunity to solicit questions and comments. However, the website, itself, will not be the primary line of communications with the Port's rail customers.

### **Institutional Agreements and Arrangements**

The Port will enter into various agreements with UP and other potential connecting carriers. Many of these were identified in the SVS of Charles Banks at page nine. The Port will seek the ability to interchange with CORP, Portland & Western (P&W) and UP. Agreements needed are identified below; most will exist in separate versions between the Port and UP, CORP and P&W.

- Operator's revenue, whether a per-car switching reimbursement or some form of revenue sharing under a cooperative marketing agreement (CMA);
- Trackage rights over portions of UP;
- Interchange agreements;
- Service and performance standards;
- Car supply and free use times and
- Car accounting and reimbursement terms

Some of these agreements will be negotiated by the Port but the party exercising the rights and responsibilities will be the rail operator. For example, the Port needs to assure that the operator will have trackage rights sufficient to access and conduct interchange at UP's Eugene Yard. Port Executive Director, Jeffrey Bishop, has engaged in discussions with UP regarding the agreements that the Port would enter into with UP and as of August 8, 2008, "discussions with UP are ongoing" (SVS Bishop page 7).



## **Operator**

The Port desires to retain a qualified shortline railroad operator to provide rail operations on the line. The Long Term Operator would commence operation over the entire Danebo - Coquille line as soon as rehabilitation is complete. The operator would access UP's Eugene Yard under terms of a trackage rights agreement that the Port will negotiate with UP. The Interim Operator's service to customers between Danebo and Vaughn will cease upon commencement of service by the Long Term Operator.

A process to obtain a Long Term Operator was specified in the Supplemental Verified Statement of Charles H. Banks starting at page six. A Request for Expressions of Interest and Qualifications would be issued; responses reviewed and the Port would send a Request for Proposals<sup>2</sup> to a set of qualified respondents. The Port would arrange an inspection trip over the line and a mechanism to make customers available to bidders. Proposals would be evaluated and the Port would enter into negotiations with the preferred respondent. This process or variants have been repeated many times in recent decades as the result of the large number of shortlines spawned in that period and turnover of operators at some.

## **Ongoing Maintenance**

Once rehabilitation is complete and operation commences over the entire line, provision must be made for ongoing maintenance of track and infrastructure. The Port is especially aware of this need given CORP's failure to perform in this area. The Port's likely course of action is to make the Long Term Operator responsible for performing all maintenance activities and to so indicate in the operator procurement process. As line owner, the Port could choose to perform or contract out some or all maintenance activities without working through the operator. However,

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<sup>2</sup> It should be remembered that the Port already is embarked on a similar process to select an "Interim Operator" to operate the Danebo - Vaughn segment

the advantages of having one operator responsible for train operations and maintenance make that the preferred initial approach.

### **Regulatory Issues and Concerns**

As the Port develops its rail management and oversight structure and creates a new relationship with an Interim and then a Long Term Operator, it will carefully review the legal and regulatory obligations and issues arising from rail line ownership and its relationship with the rail operator. Some of the types of regulations to be considered include:

1. Federal regulations related to railroad operation;
2. State and local regulations related to railroad operation,
3. Environmental regulations and
4. Safety regulations.

### **Insurance Coverage Related to Rail Ownership and Operation**

The Port will need to review all of its insurance coverages in light of becoming a rail line owner as well as to determine what protection is necessary with respect to activities of the rail operator. In addition, new or additional Officers and Directors coverage may be needed with respect to issues arising from rail ownership or operations.

### **E. Conclusion**

There is no question that the Port faces significant challenges as a rail line owner with responsibility for re-instituting the service that CORP capriciously halted. However, the Port is not a newcomer to the transportation business nor to funding and managing infrastructure projects. In addition, as the Board well knows, hundreds of new railroads have started service in recent decades, providing a wealth of knowledge and experienced people that the Port may draw upon as well as showing that what the Port seeks to accomplish is readily attainable.



**Request for Proposals  
Interim Segment Service Operator / Eugene - Vaughn, OR**

September 12, 2008

**Prospective Railroad Operators:**

The Oregon International Port of Coos Bay (Port) is seeking to contract with a qualified, shortline, railroad operator to serve a portion of the Coos Bay Line between Eugene, Oregon and Coquille, Oregon (hereafter "Interim Segment.") The Port anticipates acquiring and operating the entire line as described in the attached RFP. The Port expects the selected operator to provide freight service to shippers on the east end of the line while the rest of the line is being restored to a condition supporting operations to and beyond the Port of Coos Bay. The end points of the Interim Segment are Eugene Yard (MP 649 7) and Vaughn, OR (MP 669)

The Port recognizes that there is modest traffic potential associated with the Interim Segment and that it may not support a conventional for-profit rail operation. Accordingly, the Port has proposed a compensation structure under which the operator will be paid a monthly "standby" fee to have in place the equipment and staff necessary to support the operation plus a per-train fee to be paid for each revenue train trip. Operators are invited to propose the amounts of those fees. Operators are also expected to maintain the active part of the segment on a cost plus fee basis and to propose a monthly track maintenance budget.

The Port will consider, at a minimum, the following in evaluating proposals:

- Shortline operating experience, including safety record;
- Bidder's organizational depth and financial strength;
- Acceptance of terms (or constructive counter proposals) and
- Cost proposals.

Questions concerning this RFP and proposals should be addressed to:

Martin L. Callery  
Director of Communications and Freight Mobility  
Oregon International Port of Coos Bay  
541 267 7678  
[mccallery@portofcoosbay.com](mailto:mccallery@portofcoosbay.com)

***Proposers will be disqualified if they attempt to contact other Port staff, members of the Port's Board of Commissioners or any of the shippers anywhere on the Coos Bay Line with respect to this RFP.***

125 West Central Avenue, Suite 300 / P O Box 1215 / Coos Bay Oregon 97420-0311  
Phone 541 267-7678 / Fax 541 269-1475 / email: [portcoos@portofcoosbay.com](mailto:portcoos@portofcoosbay.com) / Web [www.portofcoosbay.com](http://www.portofcoosbay.com)

State of Oregon      Tokyo Japan – Oregon Japan Representative Office / Phone 81-3-3580-895; Fax 81-3-3580-9071  
Representative Offices      Taipei Taiwan R O C – Oregon Trade & Information Center / Phone 886-2-2723-2320 Fax 886-2-2723 2312

**Request for Proposals – Interim Segment Service Operator / Eugene - Vaughn, OR**  
**Page 2**

The Port reserves the right to cancel this procurement at any time.

Proposals are due October 24, 2008. Please provide 10 written copies plus one electronic copy. The Port looks forward to receiving your proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey Bishop', written over a horizontal line.

**Jeffrey Bishop**  
**Executive Director**

**Oregon International Port of Coos Bay  
Request for Proposals  
Interim Segment Service Operator / Eugene - Vaughn, OR**

**Background**

The Port is seeking to contract with a qualified, shortline railroad operator to serve a portion of the Coos Bay line between Eugene, Oregon and Coquille, Oregon. The Port anticipates acquiring and operating the entire line as described below and expects to provide freight rail service to shippers on the east end of the line while the rest of the line is being restored to a condition that would support rail operations to and beyond the Port of Coos Bay. At that time, service will be restored to the entire line. This RFP solicits proposals to serve as "Interim Operator" on the east end of the line ("Interim Segment"). Upon completion of rehabilitation, a "Long-Term" Operator will be engaged to operate the entire line. The Interim Operator will be eligible to compete for that contract and successful performance by the Interim Operator will be considered in selecting the Long-Term Operator.

Service by the former carrier, the Central Oregon and Pacific Railroad ("CORP"), was discontinued on all but the Interim Segment on September 21, 2007. CORP cited safety concerns in three tunnels on the line, west of the Interim Segment, as well as operating losses, as the reason for its embargo.

On July 14, 2008, CORP filed to abandon the portion of the line between Vaughn (MP. 669.0) and Cordes (MP. 763.13), a distance of 94.13 miles. In addition, CORP filed to discontinue service over the line segment leased from Union Pacific (UP) between Cordes and Coquille (MP. 785.5), a distance of 22.37 miles. (See Surface Transportation Board Docket No. AB-515 (Sub-No. 2)). CORP did not request approval to abandon (nor has it embargoed) the section of this line between Eugene (MP. 648.4) and Vaughn (MP. 669.0), a distance of 20.6 miles, which CORP continues to maintain and serve several customers.

On July 11, 2008, the Port filed a "Feeder Line" application with the Surface Transportation Board ("STB") to acquire the sections of the Coos Bay line on which CORP requested abandonment and service discontinuance approval as well as sections of the line necessary to interchange in Eugene with the UP that CORP has not sought to abandon. CORP has since indicated its willingness to sell the entire Coos Bay Line including the portion necessary to connect with UP in Eugene.

CORP continues to provide service to at least one active customer at Noti, MP 665.3.

A STB decision on the Port's application for the acquisition of this Line is expected on or after October 31, 2008. If the terms imposed by the STB are acceptable, the Port anticipates that the closing will occur approximately ninety (90) days later so that the Interim Service Operator should anticipate an approximate start date for operations of no later than February 1, 2009.

### **Interim Segment Description**

*A map, track chart and timetable pages describing the Interim Segment are attached.* The segment consists of a single, unsignalled main track. Tracks other than the main track include:

- MP 660.5 at Veneta - A stub ended spur with a clear length of approximately 460 feet;
- MP 665.3 at Noti - Two customer spurs. The eastern spur serves Swanson Brothers while the western spur serves Swanson Group;
- MP 668.3 at Vaughn - A spur diverges from the main track and a short, double-ended runaround track is on the spur. The spur is out of service just beyond the west end of runaround. The out-of-service trackage extends to the plant (believed to be idle) of Rosboro, a former shipper.

### **Traffic**

Traffic on the Interim Segment has been light in recent years. There are three rail shippers on the active segment between Danebo and Vaughn: Rosboro at Vaughn and Swanson Group, Inc., and Swanson Brothers, Inc. at Noti. Rosboro records indicate that it generated 82 carloads in 1006, 30 in 2007 and closed down due to market conditions on January 31, 2008. Swanson Group records indicate that it generated 830 loads in 2006, 667 in 2007 but only 4 in 2008. Swanson Brothers shipped 58 carloads in 2006, 61 carloads in 2007 and project that it will tender 55 carloads throughout 2008.

### **Port Actions**

The Port will provide a description and photos of the line to bidders upon request.

The Port will determine the charge to be paid by shippers on the Interim Segment.

The Port will negotiate the carload revenue to be paid UP (or P&W or CORP).

The Port will negotiate with UP regarding trackage rights Danebo-Eugene-Springfield Junction to interchange with UP and CORP.

### **Interim Operator Requirements**

The Port anticipates that it will acquire the lines sought in the Feeder Line application and in the near term intends to contract with an operator to provide service on the segment between UP's Eugene Yard and MP 669 at Vaughn (the Interim Segment) Operations between Eugene Yard and MP 652.11 will be conducted via trackage rights to be negotiated by the Port over UP and between MP 652.11 and the west end of the Initial Segment will be conducted on Port-owned track. The Port also will seek rights to

permit the Interim Operator to interchange traffic with CORP at or near Springfield Junction.

There are three potential shippers on the Initial Segment as described in the Traffic section. The Interim Operator will provide the personnel, equipment, material and expertise to serve any and all shippers on the Interim Segment. One or more locomotives will be dedicated to the Interim Segment. The Operator may station such locomotive(s) on the Initial Segment, taking appropriate measures to protect the environment from drips and spills or may make arrangements to store the locomotive(s) nearby on UP. Proposers may suggest other locomotive supply arrangements but should recognize the Port's concern that locomotive(s) be available when customers need service.

Service is to be provided on an as-needed basis up to three days per week; should additional service be requested, the Port will evaluate the request and may direct the Interim Operator to operate the requested service in accordance with the proposed compensation structure

CORP interchanges with Union Pacific at UP's Eugene Yard. It is anticipated that the Interim Operator will do so as well under terms of an interchange agreement to be negotiated by the Port and UP. It is anticipated that the agreement with UP also will permit the Interim Operator to interchange with CORP's Siskiyou Line

The Interim Operator also will have the responsibility to maintain the portion of the Interim Segment used to provide service. The Port, in consultation with the Interim Operator, will determine the exact limits to be maintained ("Designated Segment"). For purposes of this RFP, proposers should assume that the line will be maintained between the east end of Port ownership at MP 652.11 and the runaround track at Vaughn approximately MP 668.3. The Interim Operator will maintain the Designated Segment to FRA Class 1 and the maintenance budget incorporated in proposals should so reflect. Should the Port arrange for the Designated Segment to be improved to a higher standard, the Interim Operator will maintain the track to that standard and the maintenance budget will be revised by the Port and the Interim Operator in consultation.

The Interim Operator will submit to the Port monthly records of cars shipped including waybill information, trains operated and maintenance of way activities conducted. The Interim Operator will arrange electronic data interface with UP and provide UP with all customary information related to interchange of traffic.

Interim Operator will render all FRA and other government reports including routine and accident/incident reports in consultation with the Port.

The Interim Operator will give priority consideration to qualified employees of CORP who have worked on the Coos Bay Line in meeting staffing needs.

## Term Sheet

Key Terms in the proposed agreement between the Port and the Interim Operator are set forth below.

### Interim Operator Coos Bay Link Key Terms

Issue	Term
Service Level	The interim Operator will serve all customers <u>as needed</u> up to three times per week on days spaced throughout the week, such as Mon./Wed./Fri. Additional service will be operated at the Port's request.
Operations Compensation	Potential operators will propose a monthly fixed "standby" cost including profit or fee to provide the facilities, equipment and staff to operate the line according to the minimum service levels specified. The standby fee should include <u>no</u> train operating costs. Instead, proposers will specify a per-train cost applicable each revenue train trip <sup>1</sup> operated during the month. Thus monthly compensation would be the sum of the standby fee plus the product of the per-train charge times the number of revenue trains operated.
Track Maintenance Standards	Interim operator will maintain the line to the FRA track class in effect as of the commencement of operations but in no case less than Class 1. The Port will specify, in consultation with the Interim Operator, the limits and tracks to be maintained.
Track Maintenance Compensation	Track maintenance will be compensated on a cost plus fixed fee basis. Each month, the Interim Operator will brief the Port as to the next month's proposed maintenance activities. The Port will have review authority over maintenance spending and the right to approve in advance maintenance expenditures above \$10,000 per occurrence. Responders will submit a proposed monthly maintenance activity and cost schedule, specifying the proposed fixed fee.
Revenues	All revenues whether transportation or property-related will accrue to the Port.

<sup>1</sup> A revenue train trip is defined as a single round trip between Eugene and Noti or Vaughn transporting one or more revenue cars (loaded or empty) for the specific purpose of serving customers on the Interim Segment including the handling of empty railcars to be stored or to be released from storage in the event the Port enters into commercial railcar storage agreements.



<b>Insurance</b>	The operator will supply all necessary insurance at its own expense, including that required by UP and, at a minimum the Port requires to be listed as an "additional insured" on the policy.	
<b>Term</b>	This agreement will be in effect until a date specified by the Port in conjunction with the initiation of service by the Long Term Operator. Term will be a minimum of six months unless cancelled sooner by the Port for cause.	

### **Proposal Contents**

Proposals should include the following:

- **Statement of interest, including acceptance of or exception to Key Terms**
- **Identification of other properties operated by the prospective operator**
- **FRA injury and accident rates over the past three full years at those properties**
- **Staffing plan**
  - **Experienced management - identify and provide resume(s)**
  - **Licensed locomotive engineers - identify or describe how to be provided**
  - **Qualified track inspector - identify or describe how to be provided**
  - **Signal maintainer(s) - identify or describe how to be provided**
- **Identification of locomotive(s) - identify model, specific locomotive(s) and date of last heavy repair or describe how to be provided**
- **Car supply arrangements**
- **EDI capability**
- **Description of how maintenance is to be performed. Specify any use of contractors.**
- **Evidence of insurance**
- **Financial statements: current income statement, balance sheet and if possible a cash flow statement, audited by a Certified Public Accountant**
- **Proposed standby and train operations costs as well as maintenance of way budget in the following format:**

<b>Item</b>	<b>Amount</b>
<b>Standby cost per month</b>	
<b>Train operations charge, per revenue train trip</b>	
<b>Maintenance of way, proposed monthly budget</b>	

**Disclaimers**

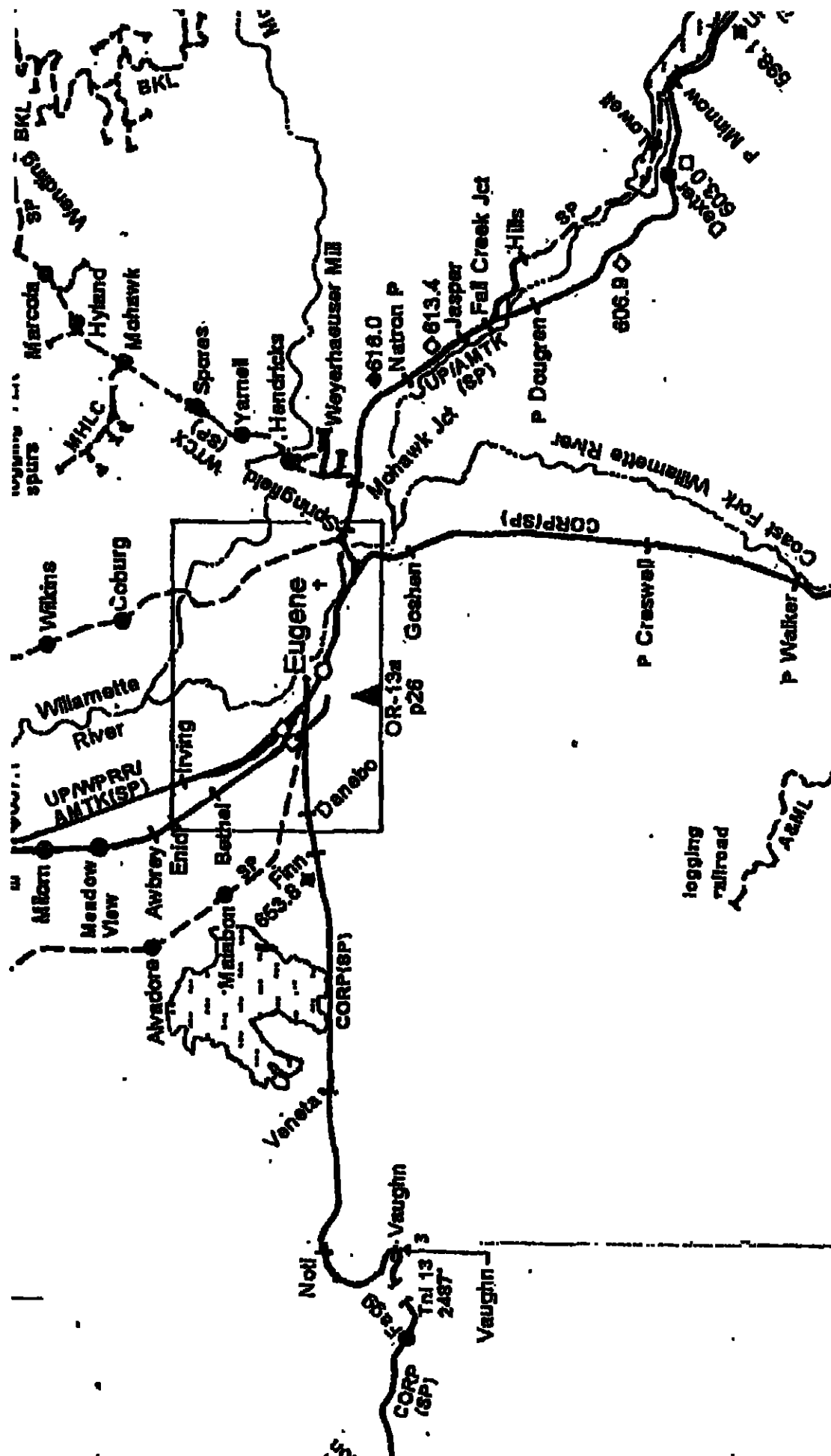
Information presented in this RFP is correct to the best knowledge of the Oregon International Port of Coos Bay ("Port") but the Port does not warrant its accuracy. Proposers are responsible to conduct their own due diligence. The Port assumes no responsibility for any costs incurred in responding to this RFP.

**Attachments**

Attached to this proposal are the following:

Map

Track chart pages



↑  
TO: KLAMATH FALLS OR.

NOTE:  
CORP. HAS TRACKAGE RIGHTS  
SPRINGFIELD JCT. TO DANEBO

644.5  
SPRINGFIELD JCT.  
03810

CORP >

CORP >

TO BLACK BUTTE GA. →

645.1  
JUDKINS

INTER-STATE I-8 OVERPASS

HWY. 126 FRANKLIN BLVD.

NOTE: SEE PLATES

639  
640  
641  
642

COSBURG RD

HIGH ST

FRANK. ST

LINCOLN ST

LAWRENCE ST

647.3  
EUGENE

DELTA HWY  
MADISON ST.  
MONROE ST  
VAN HUREN ST.  
BLAIR BLVD.

CHAMBERS ST

TO COOS BAY BRANCH < WEST >

MP. 649.5  
HM/SF CROSSING

[ UP/SF ]

649.7

EUGENE YARDS

HM/SF

640

EL. 428 FT.

650

↑  
UP/SF  
↓

- 0.1

- 0.2

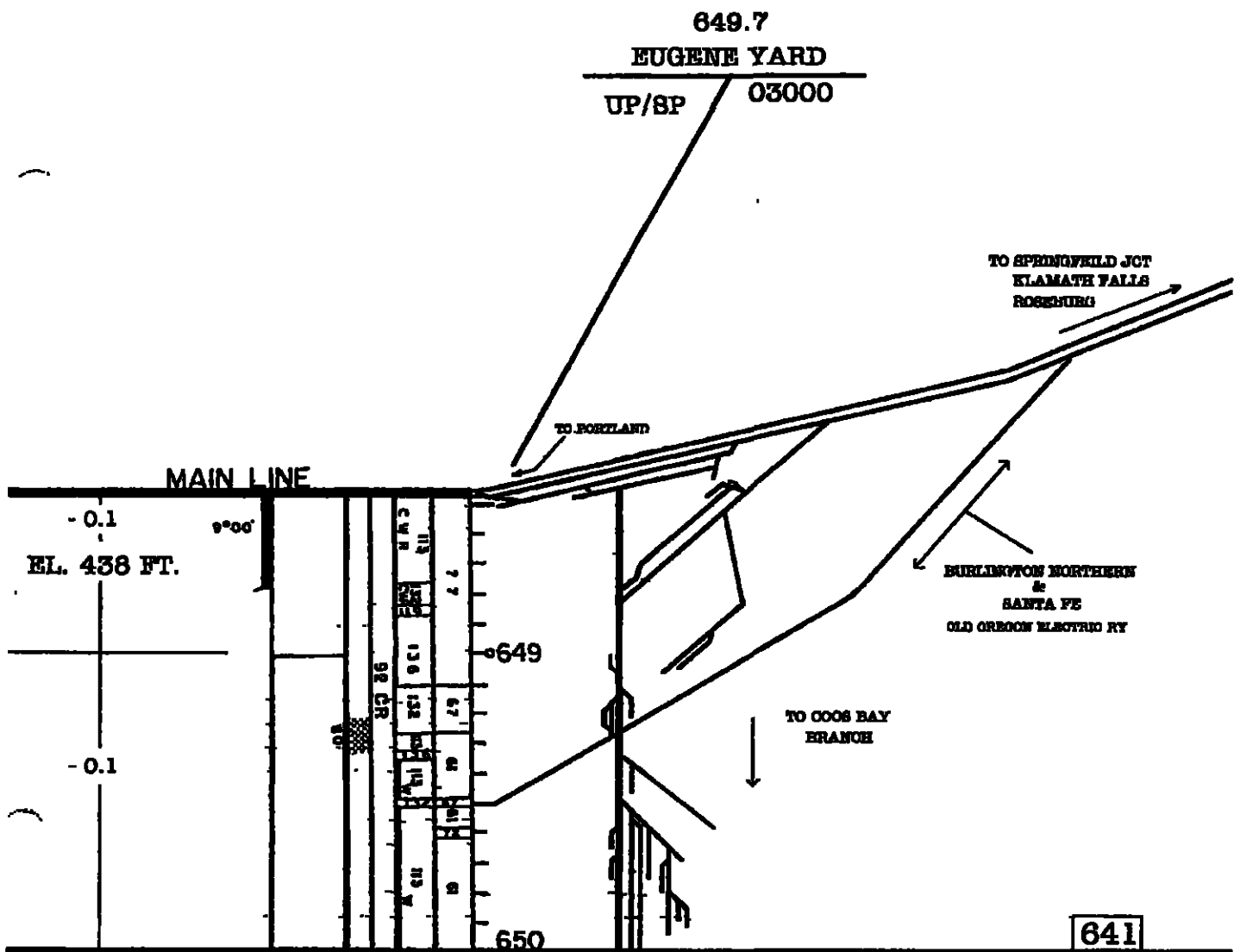
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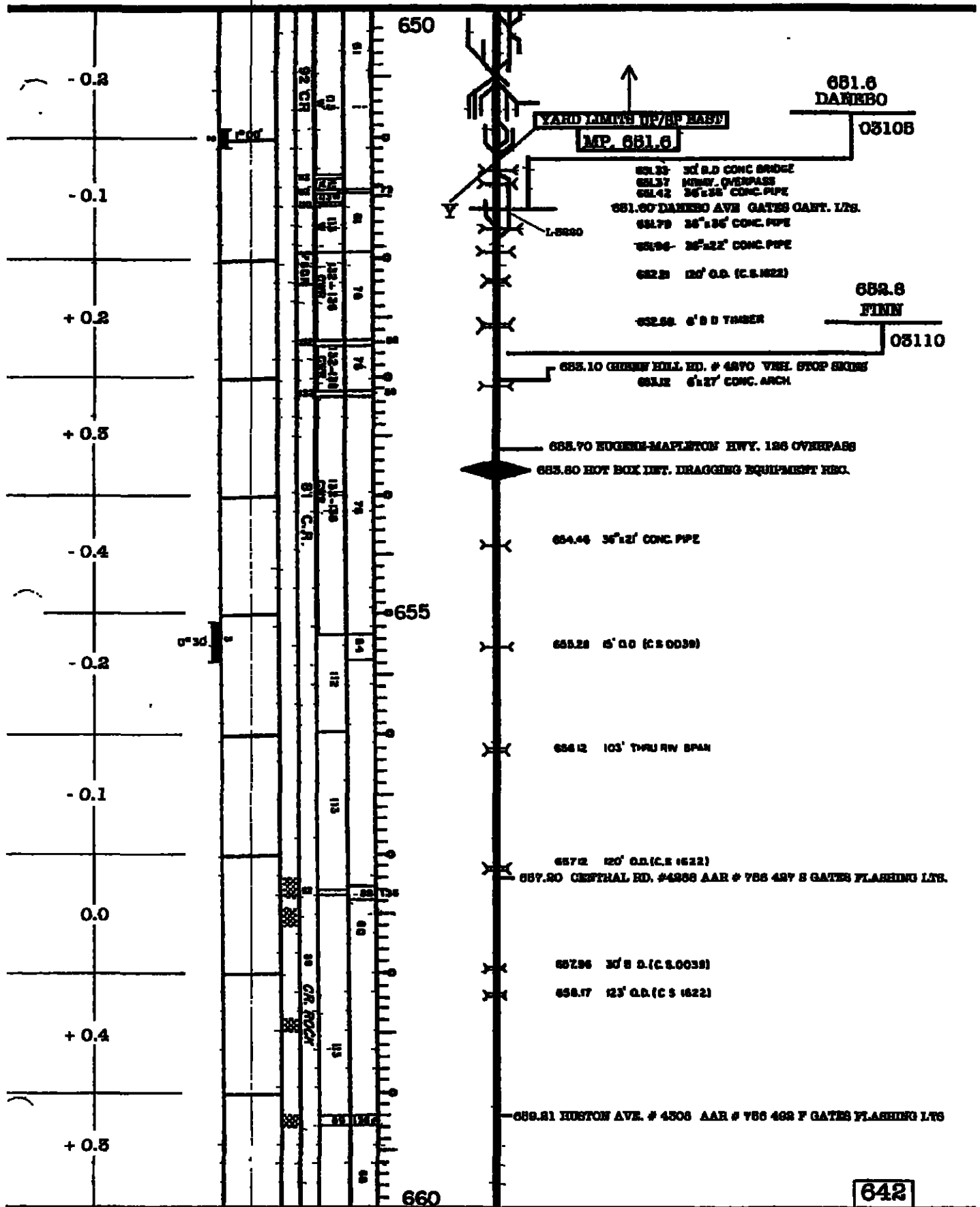
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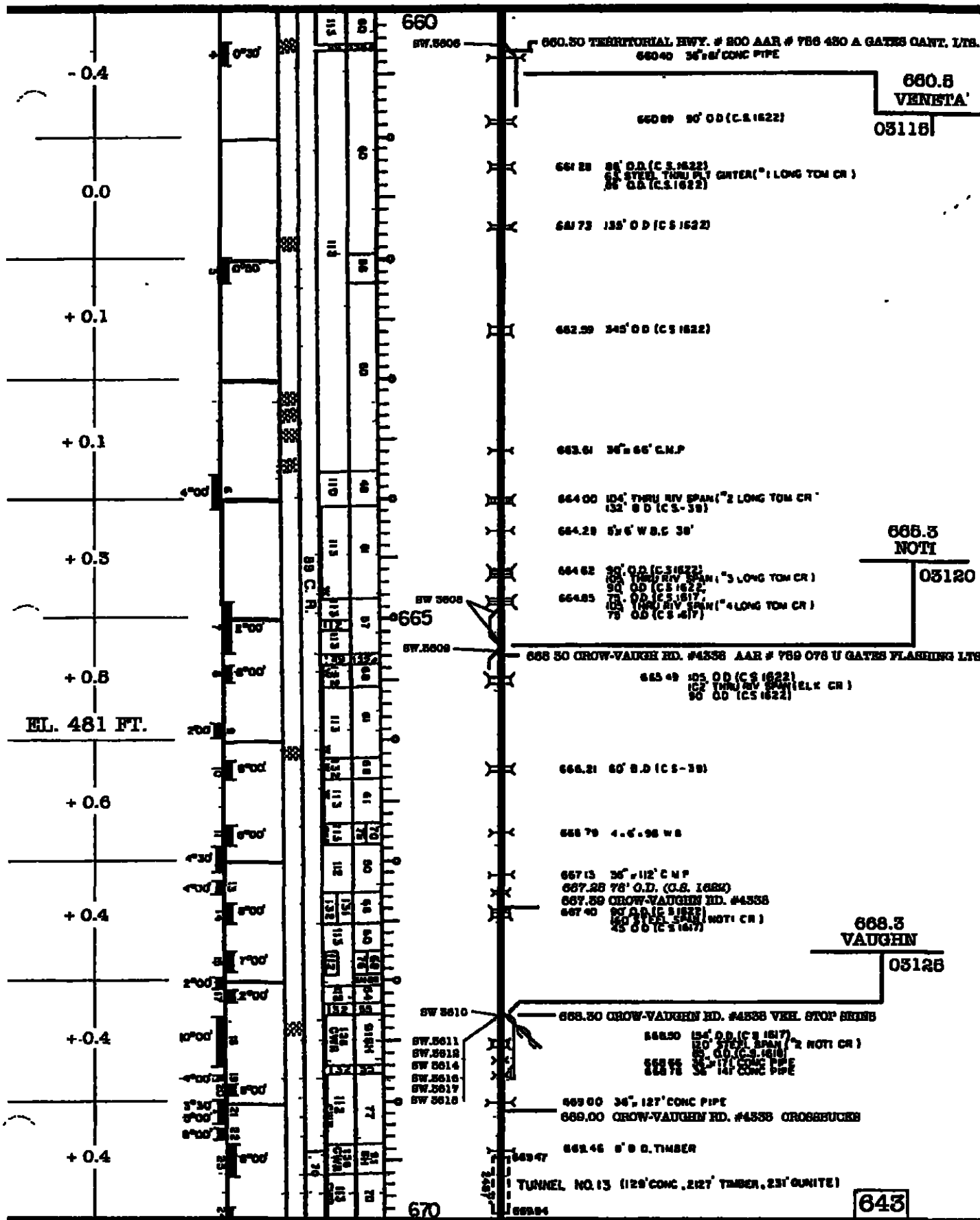
- 0.2

- 0.1

NOTE:  
CORP. HAS TRACKAGE RIGHTS  
DANEBO TO SPRINGFIELD JCT.







**Attachment B**  
**Coos Bay Branch (Danebo - Coquille)**  
**Rehabilitation Cost Estimate**

**Main Track Ties:**

600 ties per mile x 111.02 miles over first four years						
Year One	27.76	miles =	16,653	total ties @	75	cost/tie = 1,249,000
Year Two	27.76	miles =	16,653	total ties @	75	cost/tie = 1,249,000
Year Three	27.76	miles =	16,653	total ties @	75	cost/tie = 1,249,000
Year Four	27.76	miles =	16,653	total ties @	75	cost/tie = 1,249,000
Year Five (Cordes-Coquille)	23.32	miles =	13,993	total ties @	75	cost/tie = 1,049,500
Total Main Track Ties						<b>\$6,045,500</b>

**Side Track Ties:**

600 ties per mile x 5.65 miles over first four years						
Year One	1.41	miles =	848	total ties @	75	cost/tie = 63,600
Year Two	1.41	miles =	848	total ties @	75	cost/tie = 63,600
Year Three	1.41	miles =	848	total ties @	75	cost/tie = 63,600
Year Four	1.41	miles =	848	total ties @	75	cost/tie = 63,600
Year Five (Cordes-Coquille)	6.20	miles =	3,720	total ties @	75	cost/tie = 279,000
Total Side Track Ties						<b>\$533,400</b>

**Surfacing:**

Assume surfacing the same mileage as program tie installation (main line and side track)

Year One	29.17	miles at	8,400	per mile	\$245,000
Year Two	29.17	miles at	8,400	per mile	\$245,000
Year Three	29.17	miles at	8,400	per mile	\$245,000
Year Four	29.17	miles at	8,400	per mile	\$245,000
Year Five (Cordes-Coquille)	29.52	miles at	8,400	per mile	\$248,000
Total Surfacing					<b>\$1,228,000</b>

**Rail:**

Normal annual maintenance would consist of

134.34 miles /	65 years x	\$250,000 per mile =	516,800
11.85 miles /	500 years x	250,000 per mile =	6,000

Note Includes OTM and net of salvage 522,800

Assume doubling that in each year of rehab 1,045,600

Total over five year rehab 5 yrs **\$5,228,000**

**Grade Crossings - Surface:**

**\$887,500**

Assume five crossings need to be worked at \$177,500 each

**Grade Crossings - Flashers and Gates:**

**\$86,400**

New batteries and test at all, rehab five crossings

**Initial Track Clearing:**

**\$9,300**

**Internal Rail Flow Detection:**

**\$60,000**

**Tunnel Restoration**

**\$2,860,000**

**Bridge Repairs**

**\$6,750,000**

**Total Rehabilitation**

**\$23,688,100**



**Attachment C**  
**Coos Bay Branch (Danebo - Coquille)**  
**Physical Property and Maintenance of Way Expense Summary**  
**Post-Rehabilitation**

<b>Track (miles):</b>		
Main Track		134.34
Side Track		<u>11.85</u>
Total Track		146.19
<b>Turnouts (number):</b>		
Main Track Turnouts		68
Side Track Turnouts		<u>39</u>
Total Turnouts		107
<b>Crossings (number):</b>		
Main Track Public Crossings - Active		20
Main Track Public Crossings - Passive		<u>51</u>
Total Public Crossings		71
<b>Signals:</b>		
ABS signals (track miles)		0
TCS signals (track miles)		0
Control Interlockings (number)		0
<b>Bridges (lineal feet):</b>		
Steel		8,884
Wood		25,413
Concrete		<u>1,410</u>
Total		35,707
<b>Tunnels (lineal feet):</b>		
Concrete, Steel and Gunnite Lined		5,031
Timber Lined		<u>8,894</u>
Total		13,925
<b>Total Annual Program Maintenance of Way Expenses</b>		<b>\$3,336,600</b>
<b>Total Annual Routine Maintenance of Way Expenses</b>		<b><u>1,164,000</u></b>
<b>Total Annual Maintenance of Way Expenses (Track and Bridges)</b>		<b><i>\$4,500,600</i></b>
<b>Annual Expense Per Track Mile</b>		<b><i>\$30,800</i></b>

**Note**      Bridge figures include all swing span bridges

**Source:** Appendix Two and Three, CORP Track Charts, RLBA assumptions and calculations

Attachment D  
Coos Bay Branch (Danebo - Coquille)  
Estimated Annual Program Maintenance of Way Expense Summary  
Post-Rehabilitation

**Main Track Ties:**

3,018 ties per mile /	35 years/tie =	86 ties/mile	
86 ties per mile x	\$75 cost/tie x	134.34 miles =	\$868,900

**Side Track Ties:**

3,018 ties per mile /	60 years/tie =	50 ties/mile	
50 ties per mile x	\$70 cost/tie x	11.85 miles =	41,800

**Surface and Line (only):**

\$8,400 per mile/	7 year cycle =	\$1,200 per mile/year	
1,200 per mile/year x		146.19 miles =	175,400

**Rail:**

134.34 miles /	65 years x	\$250,000 per mile =	516,800
11.85 miles /	500 years x	250,000 per mile =	6,000

Note: Includes OTM and net of salvage.

**Road Crossings:**

71 crossings x	50 feet per crossing =	3,550 L.F.	
3,550 L.F. x	\$250 per L.F. divided by	30 year life =	29,600

**Turnouts - Timber and Steel:**

80 main track switch ties x	\$100 per switch tie	30 years =	\$300
65 side track switch ties x	100 per switch tie	45 years =	100
68 main track turnouts x	\$300 per turnout =		20,400
39 side track turnouts x	100 per turnout =		3,900
68 main track turnout steel	\$25,000 per turnout/	25 years =	68,000
39 side track turnout steel x	20,000 per turnout/	35 years =	22,300

**Tunnel Renewal/Repairs:**

Lump sum average spending per year equal to about	300,000
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**Bridge Renewal/Repairs:**

10,294 track feet x	\$10,000 per foot /	100 year life span =	1,029,400
25,413 track feet x	1,000 per foot /	100 year life span =	<u>254,100</u>

**Total Annual Program Expenses**

**\$3,336,600**

Source: RLBA assumptions and calculations from CORP Track Chart

Note: Tie, rail, road crossing and turnout work includes ballast and surfacing

**Attachment E**  
**Coos Bay Branch (Danebo - Coquille)**  
**Estimated Annual Routine Maintenance of Way Expenses**  
**Post-Rehabilitation**

	Company Employees							Contract Services				
	Section Gang	Smoothing Gang	Track Inspection	B&B Gang	Welding Gang	Signal	Supervision Office	Ditching	Weed Spray	Brush Cutting	Rail Flaw Detection	TOTAL
Number Gangs	2	1	2	1	1	1	1					
Position	Foreman	Foreman	Inspector	Foreman	Welder	Foreman	Roadmaster					
Employees	1	1	1	1	1	0	1					
Rate (Hourly)	\$23 00	\$23 00	\$23 00	\$23 00	\$23 00	\$30 00	\$33 00					
Position	Trackman	Operator	Helper	Mechanic	Helper	Maintainer	Clerk					
Employees	2	2	0	2	1	1	0					
Rate (Hourly)	\$15 00	\$18 00	\$15 00	\$18 00	\$15 00	\$28 00	\$12 00					
Overtime hours %	7	6	10	3	5	10	0					
Fringe %	45	45	45	45	45	45	45					
Basic labor	\$220,500	\$122,800	\$95,700	\$122,800	\$79,100	\$58,300	\$68,700					\$767,900
Overtime labor	23,200	11,100	14,400	5,600	6,000	8,800	0					69,100
Fringe	109,700	60,300	49,600	57,800	38,300	30,200	31,000					376,900
Subsistence/day	0	0	0	0	0	0	0					0
Trucks	25,000	6,300	20,000	12,500	9,400	10,000	10,000					93,200
Materials/tools	36,600	20,100	16,500	19,300	12,800	10,100	10,300					125,700
Contract								\$60,000	\$60,000	\$50,000	\$60,000	230,000
TOTAL	\$415,000	\$220,600	\$196,200	\$218,000	\$145,600	\$117,400	\$120,000	\$60,000	\$60,000	\$50,000	\$60,000	\$1,662,800

Since this segment is of moderate length, it would likely be a portion of a much larger territory, therefore RLBA estimated that about 70% of the total estimated annual routine MOW expenses or ##### would be appropriate for a corridor of this size

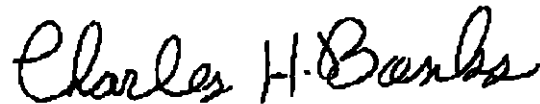
Note Dollar estimates are rounded to the next higher hundred

Gang trucks (Section, Smoothing, B&B and Welder) assumed to last eight years, Pickup trucks (Inspection, Signal Maintainers and Supervisor) assumed to last four years

Source Estimates based on RLBA assumptions and interviews

## VERIFICATION

I, Charles H. Banks, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Joint Reply Verified Statement in Finance Docket No 35160

A handwritten signature in black ink that reads "Charles H. Banks". The signature is written in a cursive style with a large, stylized 'C' and 'B'.

---

Charles H. Banks

Dated. September 12, 2008

## VERIFICATION

I, Gene A. Davis, P.E , verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Joint Reply Verified Statement in Finance Docket No. 35160.

A handwritten signature in black ink that reads "Gene A. Davis, P.E." The signature is written in a cursive style with a large initial 'G'.

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Gene A. Davis, P E.

Dated: September 12, 2008